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VIEWS AND REVIEWS

The trustees of the Toledo Chamber of Commerce have recommended that the council be reduced to seven elected at large (the present number is twenty elected by wards), with a salary of $1,800 each per annum.

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The consolidated plan of state government, which went into effect in Ohio July 1, saved $120,000 the first month through the reduction of the number of officers and employes, according to the report of the state director of finance.

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Based upon his experience of eight years as mayor and six years as a member of council, Mayor Thomas M. Coon of Cumberland, Maryland, has come out in favor of the manager plan for his city. Cumberland has had the straight commission form since 1910.

✻

The five commissions recently elected under Miami's (Florida) new manager charter are all presidents of banks. A broad improvement program is to be undertaken, and it was the feeling of the voters that men expert in finance could best be relied upon to carry it out.

✻

A recent bulletin of the Detroit Bureau of Governmental Research explains the place of research in citizen co-operation in government, and gives a list of governmental agencies in America.

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Philadelphia recently borrowed $5,000,000 for fifty years at 5½ per cent interest, and received over $200,000 as premium because of the high rate. Pointing out that the $200,000 premium is really a loan, the proceeds of which went into the general fund, the Philadelphia Bureau of Municipal Research asks if the charter, which prohibits long term loans for current expenses, has not been violated. Had the rate of the bonds been 6 per cent the city would have secured $650,000 for current expenses instead of approximately $200,000.

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Why Do We Stand for It?

Newspapers have estimated that during the first few months of his term, Governor Miller of New York filled positions, the aggregate annual salaries of which reach $500,000. This is four times as much as the governor of the average state can usually avail himself of in a full term. It does not include minor positions in the reorganized departments, notably the tax department which will be rich in spoils. This immense patronage went to deserving members of the governor's party and contributed much to the

unusual degree in which the legislature submitted to his leadership. When turned out of jobs, the minority party have taken their medicine in good style, evidently solacing themselves with hopes of the next election.

He is indeed a loyal Democrat or Republican who would try to point out how the state profited by such wholesale "firings and hirings." And what will be the effect upon the small but increasing number of young men who would like to undertake public service on a professional basis? It doesn't offer bright prospects for a career, does it? Are the American people so obtuse that they must forever remain behind other great nations in the matter of a non-political civil service?

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Wanted—A Second Civic Wind

We heard the other day about a civic league which was looking for a new job. In the old days the members of the league spent most of their time trying to convince the numerous members of the city council that they should vote for certain proposed civic improvements. Now there is a city manager in that place, and most of the desired civic legislation has been put into administrative effect without the red tape and circumlocution of the old days. The civic league is like a group of laborers who have been straining and exerting every pound of strength to push a heavily-laden dray up the hill and who suddenly find the load rolling down the other side of the slope so fast that they must run to keep up with the dray. No doubt the members of this civic league, like the dray pushers, will soon catch their breaths and find that the road leads to yet other hills to be conquered. All civic improvement is not secured by means of legislation or administrative action of public officials. Some responsibility rests upon the individual citizens. Now that a large initial obstacle is swept out of the road, such a civic league should find the way open to more ambitious plans for civic improvement which depend upon the active co-operation of every single citizen.

H. J.

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The Politician's Psychology

Our campaign committee put on an educational campaign, but did not have any politician to direct the political side of the fight. It is just another case where a righteous cause has gone down in defeat. On election day the opposition got out all the gamblers, boot-leggers and riff-raff of the city and worked hard to get every opposing vote. Whereas, our campaign committee failed to get out a full vote owing to the difficulty of determining who were for the plan. If we had it to do over again, I am inclined to think that we would put at the head of the campaign, a seasoned politician (if such a one could be found in favor of the plan), or else someone who has had some political experience in a scrap of this kind.

The above is from a letter explaining the defeat of the city-manager plan in Iowa City. The advocates were without political experience, and were defeated at the last moment when all sorts of false rumors and absurd stories were circulated respecting the real purpose of the reformers, women and "professors," who wanted to run the town.

There is a lesson in it for most of us with the "civic bug." Often we are too dignified and intellectual. Our psychology is one sided. No man, least of all the average voter, is guided by calculated rational impulses. The strong politician takes advantages of such impulses as fear, sympathy, gratitude; emotions which outside of politics are valued and respected. Surely the political purist can match the psychology of the boss.

WILDWOOD'S RECALL ELECTION

A CLEAN SWEEP FOR CLEAN GOVERNMENT

BY CARL J. GEIGES
Swarthmore College

The political ring receives a severe jolt from the incensed citizens

WILDWOOD, the famous south Jersey shore resort, went through a recall election on July 12 last, the results of which may well prove encouraging to other cities confronted by similar difficulties.

The election was bitterly contested. Every wire that could be pulled by any of the candidates, factions and organizations involved was stretched to the limit. National political partisanship, however, had no part in the affair. Every nominee for commissioner on the recall ticket was a Republican, and the issue, therefore, narrowed down to the personalities and records of the candidates and the groups supporting them.

The three commissioners who lost their offices were Mayor William C. Hendee, Oliver Bright, and Frank C. Smith. These men had been placed in power by the election of last November. On all issues that came before them they disagreed, the attendant circumstances being such that they were pretty generally accused of "playing politics" regardless of the interests of the city. The continuous squabble among the commissioners broke into open warfare when Frank Smith circulated petitions to recall his two colleagues, Hendee and Bright. Smith was successful in getting the required 25 per cent of the voters to sign his recall petitions. In their turn Hendee and Bright attempted to recall Smith but the latter fooled them by resigning.

In New Jersey recall elections are so arranged that the voters vote first on the recall, and separately on the same ballot express their choice for successors to fill the places that may be vacated. In the election of July 12, both Hendee and Smith were candidates for mayor, Hendee in the hope of staving off recall, and Smith in the hope of taking his place as a result of his recall. Each was asserted to have the support of the "gang," consisting approximately of eight hundred voters, mostly colored. Certainly they fought hard for the vote of the "gang" districts. In the meantime, however, M. Courtwright Smith, a fine, clean, upstanding business man, was persuaded to announce his candidacy for the mayoralty, giving up a position that paid him much more in order to do so. He was joined by two men of similar type, Ralph L. Carll and Alfred Taylor, who became candidates for commissionerships.

TABLES TURNED ON "PRACTICAL POLITICIANS"

The "practical" politicians of Wildwood simply laughed at this opposition. Independent candidacies without the support of the "gang" they regarded as a joke. On the twelfth of July, however, the decent element among the men of Wildwood, reinforced by a large part of the women voters, gave the "practical" politicians the surprise of their lives. Hendee

and Bright were both recalled, and all three of the independent candidates were elected by thumping majorities. The figures are as follows: for recall of Mayor Hendee, Yes, 1194; No, 253. For recall of Commissioner Bright, Yes, 932; No, 461. For Mayor, W. Courtland Smith, 852; Frank Smith, 493. For street commissioner, Taylor, 889; Pinker, 388; Wrisley, 235. Ralph Carll, who was unopposed for finance commissioner (except by Bright's effort to defeat recall), received an even thousand votes.

For a long time the politics of Wildwood have been thoroughly unsatisfactory, to put the case mildly. In the opinion of many substantial citizens these sordid political conditions have been the chief reason why Wildwood has so far failed to take proper advantage of its splendid natural gifts. Tired with the mess which had been made of their municipal affairs, the better class of voters responded solidly when they realized that at last capable men were ready and willing to sacrifice their time and energy to place the city on a good firm foundation. After a lot of shifty shuffling Wildwood has at last put its best foot firmly forward. If there is any backsliding it will be the people's fault, and the remedy, as recent events show, lies in their own hands.

CITY-MANAGER MOVEMENT

ASSOCIATION GOSSIP

BY HARRISON GRAY OTIS

THE City Managers' Association will hold its eighth annual meeting at the Chicago City Club, November 14 to 16, overlapping the last day with the National Municipal League so that joint sessions of the two societies may discuss problems of common interest.

The seventh year book of the association, which has just made its appearance, gives evidence of healthy growth on the part of the association and of the movement as a whole. Its 250 pages contain a quantity of fairly readable material, starting off with progress reports from 245 towns and cities that have adopted the city-manager plan of government, presenting the addresses and discussions that featured the seventh annual meeting, and winding up with tabulated data. There is, perhaps, a prodigality of printers' ink, but the frequency of bold face subheads gives a snap to the document that takes it out of the class of the usual society annual and divides the otherwise heavy meal into short courses that are easily digested.

MOVEMENT GROWS RAPIDLY

Chronicling the progress of the city-manager movement is one of the functions of the association. Its records indicate that there have already been 44 cases of managers being transferred from one city to another, while 17 men affiliated with the society as "subscribers" have become city managers. The little mimeographed monthly bulletin published by the association secretary serves as a medium between cities seeking managers and managers, active or prospective, who are willing to be sought. The number of cities and towns operating under, or pledged to, the city-manager plan has jumped from 229, as announced in the June

issue of the REVIEW, to 247. There have also been several changes in the personnel of the profession during the past few months.

For the benefit of those who are keeping tabs on the new plan, these additions and changes are presented herewith in two lists:

RECENT ADOPTIONS OF CITY MANAGER PLAN

State	City	1920 Population	Plan[1]	In Effect	Manager
California	San Rafael	5,512	O	July, 1921	H. K. Brainerd
Connecticut	New London	25,688	C	Oct., 1921	
	Stratford	12,347	C	Oct., 1921	
Florida	Fort Myers	3,678	C	July, 1921	
	Lake City	3,341	C	June, 1921	C. E. Hurst
	Miami	29,549	C	July, 1921	C. S. Coe
Idaho	Rupert		O	July, 1921	J. C. Lunday
Indiana	Michigan City	19,457	C	Jan., 1922	
Kansas	St. Marys	1,321	C	May, 1921	W. E. Miller
Massachusetts	Stoughton	6,865	C	Jan., 1922	
Michigan	Benton Harbor	12,233	C	July, 1921	
	Escanaba	13,103	C		
Minnesota	Columbia Heights	2,968	C	Aug., 1921	
Montana	Bozeman	6,183	C	Aug., 1921	
North Carolina	Reidsville	5,333	O	May, 1921	E. H. Wrenn
			(C	May, 1922)	
Ohio	Cleveland Heights	15,236	C	Jan., 1922	
Oklahoma	Woodward	3,849	C		
	Yale	2,601	C	May, 1921	W. E. Estep
South Carolina	Florence	10,968	C	June, 1921	Clyde G. Brown
Texas	Houston	138,076	O	May, 1921	Claude E. Belk
West Virginia	Bluefield	15,282	C	July, 1921	Clarence E. Ridley
	Morgantown	12,127	C	July, 1921	Charles S. Sutherland

RECENT APPOINTMENTS OF CITY MANAGERS

State	City	1920 Population	Plan	In Effect	Manager
California	Alameda	28,806	C	May, 1917	Clifton E. Hickok
	Long Beach	55,593	C	July, 1921	Charles E. Hewes
Colorado	Colorado Springs	29,572	C	Apr., 1921	A. M. Wilson
Florida	Punta Gorda	1,295	C	July, 1921	Max Charles Price
Kansas	Stockton	1,324	C	May, 1921	S. S. Smith
Michigan	Kalamazoo	48,374	C	June, 1921	Clarence L. Miller
North Carolina	Durham	21,719	C	May, 1921	Radford W. Rigsby
	Elizabeth City	8,925	C	Apr., 1915	James B. Ferebee
	Greensboro	19,861	C	May, 1921	P. C. Painter
	Morganton	2,867	C	May, 1913	Mr. Cannon
Ohio	Dayton	152,559	C	Jan., 1914	F. O. Eichelberger
Oklahoma	Ardmore	14,181	C	May, 1921	Kirk Dyer
	Lawton	8,930	C	July, 1921	C. E. Douglas
South Dakota	Rapid City	5,777	C	Aug., 1921	A. W. Vincent
Virginia	Bristol	6,729	C	Sept., 1921	S. L. Keller
West Virginia	Clarksburg	27,869	C	May, 1921	Harrison G. Otis
	Wheeling	54,322	C	July, 1921	Homer C. Crago

[1] "C" indicates adoption of plan by charter; "O" indicates adoption of plan by ordinance.

THE CIVIC CROWD

BY HARLEAN JAMES

Secretary, American Civic Association

Our common interests and common tastes, logically enough, bring us together in Chicago in November. :: :: :: :: ::

ALMOST every well-conducted city nowadays has working within its confines at least the following voluntary civic organizations:

City Club—forum or civic action type—composed of men; often affiliated with the National Municipal League and the American Civic Association.

Women's City Club—forum or civic action type—composed of women; often affiliated with the National Municipal League and the American Civic Association.

Women's Civic or Municipal League—civic action type—composed of women, often affiliated with the National Municipal League and the American Civic Association.

Civic League or Club—civic action type—composed of men and women, often affiliated with the National Municipal League and the American Civic Association.

Civic Section, Chamber of Commerce, with a participating voice in the Chamber of Commerce of the United States, often affiliated with the National Municipal League and the American Civic Association. Membership largely men, but often including women.

Civic Section, Woman's Club, member of General Federation of Women's Clubs, often affiliated with the National Municipal League and the American Civic Association.

Sectional Improvement Associations, often joined in a city-wide federation of improvement associations, distinctly neighborhood groups, but sometimes affiliated with the American Civic Association.

Perhaps because the social workers have dealt largely with the family as a unit, even in the application of the "case method," it has been found natural and necessary in social work that men and women should work shoulder to shoulder. Civic improvement, on the other hand, has necessarily concerned itself largely with laws, regulations and administrative acts of public officials. Consequently the voters and the non-voters found themselves in groups facing slightly different approaches to their problems. This distinction has now been swept away. There is now no fundamental difference in the method of approach to problems of civic improvement between men's city clubs and women's city clubs, nor between women's civic leagues and men's civic leagues.

Whether composed of men alone, or of men and women, there is a special function to be performed by the civic sections of the chambers of commerce, the associations of the business interests of the community. The civic sections of the women's clubs enroll the interest of many who would be reached in no other way. The improvement associations are essentially geographic and neighborhood in character, and will continue to render valuable service to the neighborhoods. For a considerable period, certainly, too, the newly-organized Leagues of Women Voters will primarily perform the dual function of removing discriminations in law and practice against women, and training women voters in the duties and responsibilities of citizenship.

II

The general civic work of the communities would seem to devolve upon

the city and civic clubs and the civic and municipal leagues. Whether the cordial co-operation between the men's and the women's organizations will lead to alliance or merger, it is difficult to say; but it is within the realm of possibility that the next decade will see the present distinctions swept away. In the meantime, the National Municipal League, for twenty-seven years in the governmental field, and the American Civic Association, for seventeen years in the civic improvement field, have maintained a membership of both men and women and have as affiliated members both men's and women's clubs. Both associations are service organizations. They neither control nor are controlled by local organizations, and the same may be said of the local bodies.

And yet no single community can live unto itself alone, can pursue its own way in disregard of its relation to the surrounding country, or to the state-wide conditions under which it must live. Neither can any community in any state forget that the United States of America stands for a country-wide citizenship, a nation-wide vision, and a broad fellowship in civic endeavor.

III

The need, therefore, for continued and increasing service on the part of the National Municipal League and the American Civic Association seems clearly evident. The combined programs of these two organizations, together with those of the City Managers and the Civic Secretaries during the third week in November in the city of Chicago, should appeal to those who are carrying the civic burdens in their home neighborhoods.

A cordial invitation is extended to all individuals and organizations interested in civic improvement to attend *Civic Revival Week* in Chicago, November 13–18. The City Managers meet November 14–16, Monday to Wednesday; the National Municipal League November 16–18, Wednesday to Friday; while the American Civic Association, starting with Civic Sunday, holds sessions Monday to Thursday inclusive. The headquarters of the City Managers and the National Municipal League will be at the City Club; the headquarters of the American Civic Association will be at the Drake Hotel. On Thursday, Co-operation Day, the National Municipal League and the American Civic Association will hold joint sessions.

These national civic meetings offer a unique opportunity to us all to correct our civic perspectives by comparing notes with other communities and becoming more intimately acquainted with a national point of view.—H. J.

EMPLOYERS AND EMPLOYES AGREE ON CIVIL SERVICE PRINCIPLES

BY CLINTON ROGERS WOODRUFF
President, Civil Service Commission of Philadelphia

FORTUNATELY two great national bodies are devoting a large measure of time and attention to the solution of one of the unsatisfactory phases of the public service: The Chamber of Commerce of the United States and the National Federation of Federal Employes, representing respectively the employer and the employed.

CHAMBERS OF COMMERCE DEMAND RECAST CIVIL SERVICE

Adequate and equitable pay for the army of government employes is being strongly urged by the Chamber's Committee on Budget and Efficiency as one of a series of proposals for a complete recasting of the federal civil service. Its report was submitted to a referendum vote of the industrial and commercial organization within the Chamber's membership. It involved nine recommendations dealing with reclassification of personnel and related problems. The purpose of the referendum was to ascertain the opinion of business organizations respecting the recommendations made by the committee, and the results were most enlightening. The propositions voted on were:

I. The present system under which personnel for the federal civil service is secured and managed should be recast. The vote was 1,695 for, and 23 against.

II. Adequate and uniform pay under essentially like conditions should be established as a fundamental principle for the federal service through reclassification and regrading. Vote: 1,652½ to 43½.

III. Reclassification should be by statute based on investigations already made and further investigation by the civil service commission. Vote: 1,562 to 108.

IV. Reclassification should be installed by the commission and the budget bureau and current correction made by congress aided by these agencies. Vote: 1,610 to 69.

V. Promotion should be given statutory recognition as the preferred method for filling vacancies, with lines of promotion clearly defined and promotions made upon the basis of proved merit under civil service regulations. Vote: 1,649 to 39.

VI. All administrative officers not responsible for determining policies should be included under civil service rules. Vote: 1,544 to 135.

VII. Transfers between departments should be regulated by executive orders consistent with the civil service law. Vote: 1,680 to 13.

VIII. Efficiency records should be developed by the civil service commission. Vote: 1,653 to 48.

IX. Removal of an employe should be possible upon a written statement of reasons to the employe with opportunity for written reply, but without right of appeal above the head of the department. Vote: 1,481½ to 173½.

These propositions represent the underlying principles of a sound policy of public service employment whether federal, state or municipal, and their more general observance in the various branches of government would represent a great step towards truly efficient and economical administration of public affairs.

THE PERSONNEL PROBLEM AND THE PUBLIC

In support of its recommendations the Chamber's committee urged that the "personnel problem of an enterprise which engages the services of

more than half a million employes cannot be minimized, if the public which foots the bills in ever increasing amount for government costs is ever to receive a reasonable return on its investment. Recent developments make it not only opportune, but imperative, that business now give this matter the thoughtful consideration which it deserves."

It is most significant that this report should declare, as it did with strong emphasis that "in private industrial and commercial life, the innumerable questions relating to the efficient utilization of the operating and managing forces of the organization are now accepted as of vital importance to successful management of the business. In this field of administration of the public business government has lagged far behind. With the passage of time the statute books have become filled with a mass of varying directory or prohibitory decisions of Congress which to-day seriously hamper any successful handling of recognized problems of admittedly primary importance in establishing a businesslike administration of the federal service." It is equally important and significant that the recommendations should be so overwhelmingly approved by the constituent members scattered all over the country and representing every section.

With reference to its recommendation that adequate and uniform pay under like conditions should be established, the committee maintained that "it is an elementary proposition that a body of employes permeated with a sense of unjust and inequitable treatment by the employer in the primary matter of just pay for services rendered will be inefficient and expensive. Present conditions in the federal service as to fixation of salary rates are perpetual incitements to discontent and half-hearted effort, and an undoubted source of great waste of public money."

An important recommendation of the committee was the one having to do with inclusion within the civil service of administrative officers not charged with determining matters of policy. With respect to this suggestion the committee said:

> One of the most serious handicaps to both economy and efficiency in the federal service is undoubtedly to be found in the practical exclusion from the permanent civil service of a very large part, if not practically all, of the administrative offices of real distinction. No one would suggest that Cabinet officers and their immediate assistants should be other than the personal selection of the President or of themselves, and permanency in the highest positions in the foreign service of the Department of State, such as ambassadors and ministers, probably will have to come as a matter of practice rather than law or executive rule. There still remain, however, a very large number of positions which belong properly with the permanent operating force of the government, and should be so recognized. These include principally such local offices as postmasters of the first, second and third classes. Appointments to these offices continue to be made almost without exception on the basis of political favor. Each change in administration, particularly if it involves a change in party, means a wholesale overturn in this personnel. This waste is tremendous and obvious.

FEDERAL EMPLOYES IN HARMONY WITH U. S. CHAMBER

It is equally interesting to note what legislation the National Federation of Federal Employes is asking congress to exact. It covers the following main points:

1. Reclassification of all positions in the civil service, everywhere throughout the United States.
2. A salary scale which fixes pay by the skill and training required for the work, with a minimum rate of not less than the cost of living as determined by official investigations.
3. Appointments and promotions on proved qualification, determined and regulated by the federal civil service commission.

4. Removal of inefficient employes in accordance with standards of efficiency, controlled by the civil service commission.

5. Opportunity for advancement of pay within a grade, according to efficiency.

6. Equal compensation and equal opportunity for promotion irrespective of sex.

7. A uniform efficiency rating system, to be established by the civil service commission, with records accessible to employes and provision for appeal to the commission.

8. Transfers between departments at higher rates of pay.

9. Administration of the salary provisions by a central agency, which can keep the classifications up to date.

How significant that these two bodies agree so closely not only with each other, but with those who have been contending so faithfully for the Merit System so many years. If any argument were needed as to the general soundness of their contention that merit and fitness should be the basis of appointment, we have it in the vast army of employes involved and the importance of their duties and that these most concerned employers, employes and the public alike, agree substantially on the essential principle.

DEADLOCK IN PUBLIC UTILITY REGULATION

II. NOTHING EVER SETTLED

BY JOHN BAUER

Consultant on Public Utilities, New York

The second article in our series on the regulation of public utilities. What are fair value, a reasonable return, proper operating costs? These and other questions are still unsolved. :: :: :: ::

In the previous article, the writer showed that regulation of public utilities had failed to take into account the necessity of developing and maintaining the credit of the companies and that as a consequence they have been unable, or have had difficulty in obtaining funds for necessary construction and improvements and to furnish reasonable service to the public. This failure properly to conserve the credit of the companies is, however, only a part of the more far-reaching failure to work out definite principles and methods of regulation. The chief difficulty is that *nothing is ever settled.*

Regulation started with the broad proposition that the commissions should fix reasonable rates. After about twenty years of active experience, little progress has been made beyond the original vague formula; it has become clarified only in that reasonable rates are stated as would bring a fair return on the fair value of the property used for the public service. This, however, is still so general that it does not indicate even the important steps in rate making and does not attempt to provide systematic machinery for the details of rate regulation.

WHAT IS FAIR VALUE?

The first basic question which should have been definitely answered long ago is, *what is fair value?* After all the interminable discussion, the publication of innumerable articles, scores

of books and reports of learned societies, opinions of commissions and courts,—the statement of principle has scarcely advanced beyond the dicta of Justice Brewer in *Smythe* vs. *Ames*, back in 1892, that in the determination of fair value there shall be taken into consideration the actual cost of the property, the capitalization of the company, the earnings, the reproduction cost, and such other factors as may be necessary. This manifestly is not a clear guide to a commission in actually fixing rates. It was perhaps the best possible original pronouncement, which long ago should have been worked out into precise principles and methods of valuation.

Perhaps this much has been cleared up as to the meaning of fair value, that it does not signify so-called commercial value as used by economists in ordinary discussions of competitive business. Such value depends upon the earning power of the property, which in turn reflects the price of the product, and for that reason cannot be used as the basis for public utility rate making. The rates charged would determine the value of the property, so that the value itself could not be used as the measure of fair rates. While this is a matter of simple logic and has been extensively recognized by regulative bodies, still it has not been definitely disposed of and can still be dragged as a factor into a rate proceeding.

While it may be assumed that fair value does not signify commercial value, but some category of cost or investment, the term is still so loose that it causes utmost confusion in practical rate making. It may mean (1) the actual cost of the property used in service, that is, the cost of actually installing the plant and equipment; (2) the reproduction cost, which would be incurred if the property were to be installed at the time the rates are fixed; (3) the actual or installation cost, less deduction for depreciation; (4) the reproduction cost, less depreciation, or (5) the actual investment, the amount of money contributed by the investors without regard to the existing property employed in the service. These are the principle bases of valuation which enter into the discussion of rate proceedings; no one basis has ever been adopted and each one is shrouded in numerous subsidiary uncertainties.

The difference between these different general bases of valuation is frequently great, and in every case the lack of definite principle causes drawn-out litigation, the accumulation of a voluminous record, acrimonious controversy, with the final result that nothing is definitely settled. The purpose of this article is not to defend any particular basis of valuation as the one specifically applicable to rate regulation. A forceful argument can be made for any one of the methods. The point is that no policy has ever been decided upon and the whole matter of valuation is almost as chaotic as twenty years ago.

An important factor of valuation is the deduction that should be made from cost new of the property for depreciation, to take account of the wear and tear and obsolescence which may have been realized up to the date of the appraisal. While, unquestionably, the preponderance of court and commission decisions has been that depreciation should be deducted from cost new, the method of computing the amount has not been decided, and even the general principle of deduction has not been so clearly established but that it is still vigorously disputed by the companies in rate proceedings before the commissions. Thus one of the largest public utility interests in the country is now appearing before a commission with an application for an

increase in rates, and it contends that its properties are furnishing 100 per cent service and that no deduction should be made for depreciation. And this is possible after the many years of regulation and the vast discussion of depreciation and rate making!

PRINCIPLES OF VALUATION CONFUSED

All these questions as to valuation should, of course, have been definitely disposed of many years ago. When regulation was first begun, there was great difficulty in most instances to decide just how to treat the investors justly in determining the amount of the past investment. But the commissions should have proceeded as rapidly as possible to fix definitely in every case the amount of the investment entitled to a return, and thus eliminate once for all the uncertainties as to past investment. In such a determination, some injustice probably could not have been avoided; the investors might have been somewhat harshly treated or the public might have been required to pay a return on a somewhat excessive valuation; but the margin of this uncertainty would not have been great, and thereafter definiteness should have been maintained. If the amount of investment entitled to a return at the beginning of regulation had been ascertained, then the actual additional investment made subsequently could have been easily determined and the entire amount on which the investors were entitled to a return could have been constantly shown by the books of the company, supervised and controlled by experts of the commissions.

But, we are still in the chaos of valuation. There is hardly a company whose rights have been so clearly determined that there is not ground for acrimonious dispute as to the amount of investment entitled to a return. Even where appraisals have been made, the values then determined have not been clearly recognized as finally fixed sums, to which need be added merely the additional subsequent investment. Thus in a noted case which had required nearly five years for determination, there is to-day after a further lapse of five years, the question looming up whether the company is now entitled to a return upon its present properties at present prices without regard to the previous appraisal, or whether the earlier valuation should be taken as a starting point. And, there will be again all the so-called evidence, cross examination, and arguments as to all subsidiary matters of valuation, which had taken many months of time before and should have been finally disposed of. How, with such lack of principles and machinery, can a commission fix rates in a practical way, so as to dispose reasonably promptly of the large issues that come up for decision?

PROPER RATE OF RETURN UNCERTAIN

Besides the questions of investment which have remained unsettled, there is also the determination of the rate of return that has been left uncertain. In every considerable case, there is extensive "evidence" presented to show the reasonable rate of return, and there are long and vigorous arguments to support a higher or lower rate for the company or city. The margin of uncertainty usually ranges between 6 and 8 per cent; this difference is so great, especially in a large property, that naturally counsel feels the issues at stake of such importance as to justify all pseudo proof and tenuous argument to support his view.

As soon as possible after active regulation had begun, the commissions

should have fixed the rate of return to which the companies were entitled upon the then existing investment made prior to regulation; this would have been a permanent right of the company and a definite obligation of the public, without subsequent variation or further modification. Thereafter, upon additional investment, there should have been allowed as return the actual interest or dividends required by investors as determined by the successive issues of securities in the course of the development of the business. The commissions have had control over the new issues of securities and thus have had available a definite measure under complete accounting control by which to fix the amount of necessary return upon new investment; but they have not employed even this medium of certainty. If they had once for all fixed the return reasonably allowed upon the old investment and then added the necessary interest or dividends for new capital, they would have eliminated all uncertainty as to rate of return, and in the determination of rates they would have had simple numerical factors which they could have taken directly from their records or from the books of the companies.

The commissions are now confronted not only with the general unsettled question as to the rate of return, but also with the startling if not absurd issue that the return on the entire investment should represent the present exceptionally high interest rates due to the war,—with the investment based upon the peak prices of present reproduction cost! Clearly the burden upon the public would be tremendous if the bulk of the investment, which had been made prior to the war, should now be subjected to a return at present market rates. At the same time, these matters of principle had never been determined; consequently the investors and their counsel cannot be held particularly blameworthy if in the chaos of uncertainty they now urge every possible claim in favor of their interests. The commissions should have formulated long ago principles and methods so clear that these questions could not now be raised to confuse and to clog the actual work of regulation.

OPERATING CHARGES DISPUTED

Not only the investment and rate of return, but even the operating expenses which should be included in the rates charged to consumers, are subject to uncertainty and dispute. The general formula is that only reasonable expenses should be included, while the cost of mismanagement should fall upon the investors to furnish incentive for progressive efficiency in operation. This, however, is vagueness personified, and as a matter of fact, after deliberate consideration, practically all operating expenses when once incurred are finally admitted into the computation for rates so that the assumed incentive for efficiency hardly exists.

OTHER CONFUSING ELEMENTS

It has been fairly clearly established that all taxes on property used in operation are properly included in the rates, but during the past five years a new question has arisen as to whether federal taxes should be included. Since the income taxes have assumed large amounts, this question has come to be one of considerable importance. Although there has been sufficient time to decide definitely how the matter should be treated, it has not been

determined and promises to be an additional factor of confusion in practical rate making.

In a very important rate proceeding involving one of the largest companies in the country, the question has come up to what extent the rates in each community should be separately determined where the company serves a number of cities in the same state. The astounding proposition has apparently been laid down by the commission in the case that no valuation or determination of investment for the individual cities is needed, on the assumption that the company is entitled to a return on its entire property throughout the state without regard to segregation between the different municipalities. This view, of course, is not established law, and its discussion does not come within the scope of this article; its significance here is that after twenty years of regulation a matter of such profound importance should not have been decided and should now become the subject of extended litigation.

Many other points which should have been decided definitely long ago are still shrouded in uncertainty; enough have been enumerated to show why regulation has not succeeded. Manifestly, before the commissions can perform their task of rate making in a practical way, the must formulate clear-cut principles, adopt definite rules and methods and establish an automatic machinery by which costs and returns are shown. They must get rid of present chaos; they must not be compelled to reconsider the same questions and issues *ad infinitum;* they must make actual decisions, establish certainty as to facts and methods,—cut through the circle of forever going over the same ground and never getting anywhere.

ONE HUNDRED MILLION DOLLARS IN NEW HOUSING UNDER TAX EXEMPTION

BY HENRY H. CURRAN
President, Borough of Manhattan

The Fusion Candidate for Mayor of New York describes what is being done in that city to provide homes for the people under the law granting tax exemption for new houses. :: :: :: ::

At this writing it is just a little over four months since the board of estimate concurred in the board of aldermen's action approving a tax exemption ordinance for the City of New York. Since that day, results of the ordinance have practically silenced its opponents; even the loudest of them. In those four months, plans for 20,897 homes have been filed in the five boroughs of the greater city. This is an increase in building over the same period last year of more than 215 per cent.

As we know, it was the exigencies of the war that started the housing shortage. Bending all its energies toward the task of beating the enemy, our national government decreed that labor and materials should be mobilized in war work, while building was practically suspended. And we have never yet caught up. Each month for the past two years, at least up to the be-

ginning of this spring, has seen the number of available homes becoming smaller, while the number of families, without adequate living quarters, has grown steadily greater.

This housing shortage, which tax exemption is helping to relieve here, was perhaps more serious in New York City, due to the tremendous population and congestion thereof, than anywhere else in the country. It was and still is, in my opinion, the most serious problem facing the municipal authorities. And its results have been most demoralizing to good citizenship.

In the first place, rents have skyrocketed beyond the ken of the man of moderate means. Some unscrupulous landlords have gone to the most outrageous length in their efforts to secure all that the traffic would bear. People are trying to make the most of all sorts of makeshifts in order to have a place to live. Apartments built for one family have been divided and subdivided again until men, women and children are crowded into cramped quarters that are unsanitary and indecent. Patients suffering from such infectious diseases as tuberculosis and typhoid fever have been and are even now forced to take their chances of recovery jammed and huddled in the same rooms with their well fathers and mothers, brothers and sisters.

Efforts to relieve these conditions began about eighteen months ago. Plans were considered from two separate and distinct angles: First, there were the immediate needs of the case, touching primarily the relations between landlord and tenant, the size of rentals, regulations of dispossess proceedings, etc. Second, there was the question of permanent relief, which could only come about in one way; that is, in the construction of more homes.

So far as the immediate needs were concerned, the New York legislature enacted laws designed to relieve conditions here in the city for the time being. These laws were somewhat drastic in character. They had to be, to be effective. And they brought their measure of help in a desperate situation.

PERMANENT RELIEF NECESSARY

When it came to permanent relief, however, those at Albany felt that they must encourage builders in some way, and, so, in the special session of September, 1920, the legislature passed the tax exemption law allowing municipalities to exempt, for ten years, from local taxation, all new buildings erected for dwelling purposes. To the governing bodies of each city was left the option of taking advantage of this law, or not, as they deemed best.

I felt then, as I feel now, that the only way to solve our housing problem was to build homes enough to go around. I also felt, that, to get builders to invest their money during the period of reconstruction, following the war, there must be some definite incentive in the way of financial aid. Otherwise, a man who started, say in the spring of 1921, to erect an apartment house might find himself in competition with a man who waited a year or so and built one at two-thirds the cost. It seemed most likely that builders would simply wait for "better times"; and, in the meanwhile, our people had to have houses, and have them right away. Therefore, as soon as the tax exemption measure became a law, I asked the Board of Estimate to instruct the corporation counsel to prepare an ordinance putting the law into effect here. This communication of mine was killed by the Board with very little ceremony.

Shortly afterwards, Alderman Collins, the majority leader of the board

of aldermen, introduced the Hylan ordinance, which purported to give the city full advantage under the state law. Before granting to any home builder tax exemption relief, however, this ordinance provided that:

> . . . the Board of Estimate and Apportionment shall first inquire into, hear and determine any application for such exemption, when the Tenement House Commissioner shall have certified to said Board in writing that in his judgment the granting of such exemption in any such case will provide relief in an emergency existing in the City of New York, due to lack of housing; and provided further that said Board of Estimate and Apportionment shall, thereupon, by unanimous vote, approve of applying such relief. . . .

THE ORDINANCE PASSES

I felt that the housing crisis in our city was so acute that no unnecessary obstacles should be placed in the way of builders, who desired to build homes for the people. And I was sure that the Board of Estimate, as constituted, could never reach a unanimous decision on anything. Therefore, I also introduced into the Board of Aldermen an ordinance which followed closely the language of the statute.

The Committee on General Welfare combined both our measures and reported out the combination which was defeated by the Board of Aldermen. Changing my ordinance then, in certain respects, I again introduced it with the co-operation of Alderman Collins, and it was passed on February 15, 1921. The board of estimate on February 25 set the final seal of approval on tax exemption for this city.

The ordinance, as enacted, provides for the exemption from local taxation until January 1, 1932, all new buildings planned for dwelling purposes whose construction was completed since April 1, 1920, or if not so completed, whose construction was commenced before April 1, 1922. Such exemption was granted to the extent only of $1,000 for each living room, including kitchens, but the total exemption shall not exceed $5,000 for each single family house, or for each separate family apartment.

After the ordinance was passed, some of its opponents declared that, inasmuch as the state law had not set any limitation on the cost of the building to be exempted, the city ordinance, in limiting that amount at $5,000, rendered the ordinance unconstitutional. However, in its session last winter, the legislature settled this question by an amendment to the original bill permitting municipalities to make what limitations they chose, and legalizing those already made, so that there is now no question as to the constitutionality of the act.

While the ordinance did not become effective until February 25, 1921, yet all dwellings finished since April 1, 1920, will receive the benefits provided for in the law. The fact that dwellings completed since April 1 were included in the assessed valuation for 1921, which valuations have already been confirmed and fixed, will not prevent the relief being given for 1922 and subsequent years.

BUILDING PERMITS INCREASE 216 PER CENT

The following table gives the number of building applications filed during the four months from February 26 to July 9, inclusive, for the past two years. It shows that since the enactment of the exemption ordinance plans for an average of more than 1,000 homes a week in the greater city have been filed:

NUMBER OF FAMILIES PROVIDED FOR

	Dwellings		Tenements		Dwellings and Tenements			
	1920	1921	1920	1921	1920	1921	Incr.	Per cent
Feb. 26–Mar. 5	291	317	86	111	377	428	51	13
Mar. 7–12	277	391	12	257	289	648	359	124
14–19	442	433	0	567	442	1000	558	126
21–26	401	475	92	90	493	565	72	14
Mar. 28–Apr. 2	428	478	0	465	428	943	515	120
Apr. 4–9	527	608	139	317	666	925	259	39
11–16	410	696	120	266	530	962	432	81
18–23	420	615	44	660	464	1275	811	174
25–30	256	652	79	513	335	1165	830	248
May 2– 7	326	729	94	696	420	1425	1005	239
9–14	213	607	32	479	245	1086	841	343
16–21	234	728	58	754	292	1482	1190	407
23–28	190	830	0	545	190	1375	1185	624
May 31–June 4	145	617	51	475	196	1092	896	459
June 6–11	240	924	31	604	271	1528	1257	656
13–18	231	840	163	612	394	1452	1058	268
20–25	122	731	0	522	122	1253	1131	927
June 27–July 2	175	704	22	400	197	1104	907	460
July 4–9	114	527	139	662	253	1169	936	370
Total	5442	11902	1162	8995	6604	20897	14293	
Average percentage of increase								216

BUILDING OF SMALL HOUSES STIMULATED

A feature of these building applications that have been filed, which is very encouraging to me, is the great number of little one- and two-family houses that are being provided under the impetus of tax exemption. Plans for nearly 12,000 of these old-fashioned, so far as New York City is concerned, little, honest-to-goodness homes, have been filed thus far in 1921, as against 5,442 in 1920. They are literally springing up in the outlying sections of the city, and what this means to our people, only the man can tell who has moved from his cliff-dweller-like abode in an apartment house to one of these real homes where the family comes downstairs to breakfast and goes upstairs to bed.

At the same time, under tax exemption, apartment house building has taken on a healthy new lease of life. Plans for 447 of these, to house 8,995 families, have been filed. This is an increase of 674 per cent over the preceding year. It is, perhaps, significant that in practically all building plans filed this spring, the cost per home has averaged under $5,000.

I believe that the tax exemption ordinance is accomplishing all its friends said it would. It is bringing homes to thousands who would otherwise be homeless. However, if the law is to achieve the fullest measure of success, help must come from those able to help. I am speaking now of the man or woman who can afford to lend money on first or second mortgages. There is no greater public service to be rendered to-day than co-operating with the man who is trying to find a home. It is a responsibility that no citizen can afford to evade. Tax exemption makes the investment doubly secure, and the investor has added returns of inestimable value in the better citizenship that decent housing facilities for everybody will insure.

To the builder, the tax exemption ordinance has meant that much, if not all, of the increased cost of building over normal conditions is written off. Careful estimates place the saving at 35 per cent of the cost of construction.

LOW STREET RAILWAY FARES WITH THE HELP OF THE LANDOWNER

BY LOUIS B. WEHLE
New York City
Formerly a Member, Federal Electric Railways Commission

If the landowner will share with the public a fraction of the increased value which street railway improvements bring to his property, the puzzle of fares and services will begin to unravel. :: :: ::

NOBODY wants high street railway fares. The company managers are compelled to urge them only as a last resort. If they were sure of low costs, they would much prefer low fares, which mean better and steadier business.

THE DILEMMA: EXTENSIONS, HIGH FARES, CONGESTION

The question is how can low fares be assured? We know that fares must be sufficiently low to enable the cities to follow a normal uniform growth, avoiding congestion. But we know, too, that the service must at the same time insure rapid transportation from home to office or workshop. This means, particularly in the large cities, a continual extension of the rapid transit facilities which do not operate on the street surface. Such facilities are very costly; they entail a high capitalization and have everywhere either caused or threatened to force higher fares. And higher fares can thwart the very purpose of rapid transit extensions, since they will tend to create the very congestion which those extensions are intended to prevent.

THE WAY OUT: ASSESS THE LANDOWNER FOR CONSTRUCTION

From this dilemma there is a plain, simple escape. Not a new remedy, but an old one which has been in use in connection with other public improvements for many years all over the United States; and resort to that remedy has been since 1909 permitted in connection with street railways by the laws of New York state. The question is when will the American cities adopt it?

When a city builds a new street or a fire hydrant, the landowners along that street or in the vicinity of the hydrant are assessed by the city to pay for it. Public opinion and the courts have approved for generations this procedure with reference to these and other improvements, such as sidewalks, sewers, water systems, parks, and more recently, also, in connection with electric light systems; and the landowner is thoroughly in accord with it because his is the primary benefit of the improvement, while the benefit to the taxpayer is only a general and more remote one.

So let it be with the rapid transit lines of a large city. Take New York as an example. New York City has pledged its credit to the extent of over two hundred and fifty million dollars to build a vast subway system. The companies, in effect, operate the subways on a basis of rentals which pay for them at the end of a long term of years. The fares must be high enough to enable the companies, (after first retaining certain earnings for their own

account), to pay those rentals. In other words, the taxpayers' credit builds the subways, and then these same taxpayers, as car riders, put up the money with which the subways are paid for. The process is sound from the financial standpoint; but when we think of the landowner's profit, the general taxpayer in that process does somehow suggest the man in "Mother Goose" who had scratched out both his eyes by jumping into a bramble bush,—

"And when he saw his eyes were out,
With all his might and main,
He jumped into another bush
And scratched them in again."

THE FEDERAL ELECTRIC RAILWAYS COMMISSION ON THE LANDOWNER

For, what of the landowner? He frequently pockets a profit of from one hundred to several hundred per cent on his investment, a profit which the taxpaying and riding public has donated to him. Please read what the Federal Electric Railways Commission said about the New York landowner in its report to the President in August, 1920:

> Your Commission would urge that in every community, where and to such extent as may be practicable, consideration be given to the advisability of requiring extensions and rapid transit systems of subway and elevated to be paid for, not out of new capital invested through the medium of bonds or stock, which means for all time an added burden upon the car rider, but from special taxes assessed against the owners of property in the district the value of which is enhanced by such extensions. . . .
>
> The principle is peculiarly applicable to improvements of city transportation systems, because of the enormous increases in real estate values created when new extensions open up new territory or when the creation of rapid-transit facilities make outlying territory more available.
>
> The City Club of New York, in 1908, a few years after the extension of the New York subway from One hundred and thirty-fifth to Two hundred and thirtieth Streets, in Manhattan, had been built at a cost of $7,375,000, made an authoritative study of new real estate values created by that extension in the district lying between One Hundred and Thirty-fifth and Two Hundred and Thirtieth Streets. After deducting $20,000,000 as a liberal estimate, based upon studies of parallel situations, of the natural increase in property values in that district which would have taken place without the subway extension, it was found that the increase in values clearly brought about by the subway extensions was $49,200,000, an amount upward of seven times the cost of the improvements. The property in the district enjoyed an increase in value of 104 per cent. If, by assessment, it had borne the entire cost of the extension in the district, it would have still retained a new profit on the value of the land of 89 per cent, or an aggregate of $41,825,000 for the district. The Manhattan extension just referred to, together with the Bronx system beyond One hundred and thirty-fifth Street, cost $13,075,000. These two extensions directly created, in a limited area lying near those extensions, new land values, solely due to the extensions, of $80,500,000. Let it be borne in mind that the cost of the entire subway system from the Battery to Two hundred and thirtieth Street in Manhattan and to Bronx Park was about $43,000,000.
>
> In Philadelphia recent estimates of improvements in land values expected from rapid-transit projects in contemplation have been equally enlightening. Similar results would be certainly obtained in many other cities by studies similar to that made by the City Club of New York.
>
> *Is it not in accordance with the laws of economic justice, then, that the landowner, as such, should share his benefit of increased land value with the public?* Instead of the cost $7,375,000, of the Manhattan extension being borne by the owners of the land in the newly served territory, it was capitalized and translated into an annual charge of $350,000 or more, a burden which had to be borne out of the carfares and which to-day helps to intensify the financial predicament in which the company finds itself. If the public pays out of its fares for the cost of maintaining and operating the line which will bring the outlying landowners such enrichment, should the latter not share with the public out of that enrichment, depending upon the degree in which he is benefited, by paying for or by helping to pay for the initial cost of construction of the line? That such a solution is just is rather

significantly shown by the fact that in a number of cities, landowners in outlying districts have offered spontaneously to contribute large sums to the company to assist it in constructing certain extensions. The present predicament of the street-railway companies is in many places partly due to overbuilding, a fault traceable to political or business pressures exerted by speculators in suburban lands who had little or no financial responsibility in connection with the street-railway extensions, which they caused to be built for their immediate benefit. This action of the suburban landowners of certain cities, on the other hand, is a significant expression of enlightened self-interest and a sound, constructive recognition of a fundamental principle of justice. The establishment of that principle by law, whether by changes in city ordinances, state statutes, or state constitutions should, in our opinion, not be delayed. This thought is especially recommended to the attention of a number of communities which are now facing the necessity for extensions or rapid-transit improvements.

When the Federal Commission points out that in a number of cities landowners have voluntarily offered to contribute large sums to the company to assist in constructing extensions, we see that the principle of assessing the landowner has developed spontaneously as a resultant of the economic forces involved. The next step is to give to that spontaneous resultant a legal status, so that an obligation to contribute shall bear equally upon all landowners. It will doubtless surprise many to learn that this step has already been taken in the City of New York.

NEW YORK CITY'S NEGLECTED LAW

It seems to have been generally overlooked that the statutes of New York to-day provide in detail permissively for assessing landowners for the cost of street railway construction. The Rapid Transit Act since its amendment in 1909 has provided that New York City may construct rapid transit railroads paying for them with funds raised by the issuance of rapid transit bonds or of assessment bonds. Such line "shall be a local improvement the cost of bonds of which railroad may be met in whole or in part by assessment on the property benefited." It is then provided that the Public Service Commission, with the approval of the Board of Estimate and Apportionment or other analogous local body "shall have power to determine whether all or any, and if any, what, portion of the cost and expense necessary to be incurred for any such road shall be assessed upon property benefited thereby," etc. The entire machinery for assessment is fully provided for, and the assessment and interest may be paid in installments over a period of nine years. But this permissive law has never been used. It seems to the writer that it might well be employed as it stands, but that if it were practicable to do so it should be made more just and therefore perhaps more readily acceptable by amending it to provide that the cost of construction be defrayed in the first instance out of a general city bond issue, the determination of benefits to the landowner, and the amount of his assessment being then postponed until some time after the construction of the railway when the results are largely matters of actuality instead of prophecy.

WHAT THE BENEFITS WOULD BE

Stop and consider what it would mean in the future development of New York City if the landowners were to contribute one fifth of their new land value toward paying for the subway or elevated line which creates that new value. First it would mean a continuance of relatively low fares and even possibly, in the end, a reduction of fares. It would lessen the strain on

the city's credit, and definitely eliminate the possibility of certain large tax burdens. Then it would mean an avoidance of congestion with its train of evil consequences and would permit long-range city planning for the public health and welfare.

The subway and elevated extensions needed in New York City to-day darkly threaten its taxpayers and are a grave challenge to its credit. Mr. Daniel L. Turner, at that time chief engineer in the office of the Transit Construction Commissioner, issued in 1920 a thorough analysis and survey of the present and future traction needs of Greater New York. If the extensions are to keep pace with the city's needs, then, according to Mr. Turner, about two hundred and fifty million dollars ($250,000,000) of extensions must be built in the next twenty-five years. Even if we should proceed on a far more reduced basis, it seems certain that within the next ten years at least thirty million dollars ($30,000,000) will have to be spent for extensions into new territory on Long Island, where streets have to-day not even been laid out. Can there be any doubt whatever that the new land values which will be created in that undeveloped territory will be fully as great as those created in 1908 by the extension from One hundred and thirty-seventh Street to Spuyten Duyvil of the Broadway Subway? An assessment system should be devised which will fix upon the landowner in the heart of the city the obligation to contribute by assessment to the construction costs, whether he be benefited by central improvement such as additional trunk-line tracks, or by a suburban extension; and which will fix upon the suburban owner liability not only for the cost of the extension which most obviously benefits his property, but also for the cost of the extra central tracks or tunnels made necessary in the heart of the city by such a suburban extension. It would be a difficult administrative and legal problem to work out the determination of benefits and assessments where so many intangible elements are to be dealt with. Yet scientific handling of the problem can doubtless evolve a system which would equitably place upon the land in the center of the city and upon the suburban owners in large part, if not entirely, the cost of all future main line and outlying suburban construction. A lien of indeterminate amount would be automatically placed upon the land lying within a certain distance of the improvement; the amount of the actual increase in land value would be determined by appraisal some time after the construction; and the landowner would then be given the option to pay the assessment, if any, in installments over a period of years. "Assessment, *if any*," because in the case of central city property it frequently happens that a rapid transit improvement adds no value and sometimes even impairs value.

PRACTICABLE PRIMARILY IN LARGER CITIES

Lack of space prevents a complete discussion of the various objections which might be raised to this plan of assessment. In the first place, it would be practicable primarily in the larger cities. Furthermore, it presupposes a degree of state regulation which will secure to the public the benefit in lower rates of the saving which this plan would effect for the companies. And in some communities serious legal obstacles would have to be overcome. There are objections and proper objections to any economic plan which could possibly be devised for dealing

with any public financial problem, because every economic adjustment carries with it some real disadvantages. The question for the larger American municipality to decide is whether or not, as a matter of principle this plan presents a desirable solution. If it does, and if the administration of the plan is constructed with foresight, it can be made to work in the main justly and effectively for the lasting good of the city.

NOTES AND EVENTS

I. GOVERNMENT AND ADMINISTRATION

Party Registration and Designating Conventions Opposed in Nebraska.—Among the measures passed by the last Nebraska legislature and ordered to referendum was one requiring all voters in country precincts, towns and villages to register and declare their party affiliations before voting at the primary elections. The farm organizations oppose it because it makes independent political groupings difficult and because of the inconvenience to country people who wish from time to time to change their party connections.

Another bill ordered to referendum in Nebraska is that permitting the restoration of the convention system for the selection of delegates to national party conventions and permitting the state conventions to endorse candidates seeking nomination at the primary.

✠

California's Water and Power Act.—Petitions are being circulated under well-organized leadership to put a constitutional amendment on the ballot which will enable California to put state credit behind local development of water and power. If the amendment is adopted, a state water and power board will be created, which will pass on requests from local units of government for the construction of works for power and irrigation. If the plan is deemed feasible the state board issues bonds to cover the project and the locality contracts to buy the water or power at rates adequate to cover the investment.

A statement issued by William J. Locke, secretary of the League of California Municipalities, indicates that it will cost about $1,500,000,000 to develop water power as it should be developed in the next ten years. But at eastern rates the return on this would be $1,000,000,000 per year.

✠

P. R. Notes.—In the elections for the Northern Irish Parliament held in Ulster last May the Hare system emerged triumphant from the most severe test to which it has ever been subjected. In the counties of Tyrone and Fermanagh, which formed a single election area, 84,792 ballots, more than in any previous Hare election, were handled without difficulty. In some of the other areas the vote was only slightly less. The average vote for the constituencies was 89 per cent of the qualified electors, and the number of invalid ballots for all causes throughout the entire area was only 1.01 per cent. Outside of Belfast the minority secured representation in every election area and the results were almost exactly in proportion to the votes cast by the two sides. The outstanding leaders of all parties were elected. Although there were some deplorable instances of intimidation and impersonation, the election generally passed with comparative quietness and good order.

✠

The committee appointed by the Canadian Parliament to investigate proportional representation has reported that it was impressed with the arguments advanced by advocates of P. R., but recommended a prebiscite to ascertain the wishes of the electors before proceeding with legislation to secure it. The last Alberta legislature ordered a speaker's conference to make a full investigation of P. R. between sessions.

✠

The new constitution for Malta promulgated by the British Government on April 30, 1921, provides for the election of the entire house of assembly and all general members of the senate by the Hare system of P. R.

✠

In the national legislature and each of the provincial legislatures created by the recent Government of India Act, a committee of public accounts is to be set up, not less than two thirds of the members of which will be chosen by the Hare system of P. R. by the elected members of the legislature.

✠

American Library Association Acts on Civil Service.—At the last meeting of the American Library Association its Committee on Civil Service relations reported that it had presented the following questions to the Committee of the National Assembly of Civil Service Commissions appointed to confer with the representatives of the Library Association:

1. If the Library Association will arrange for the compilation of a bibliography of civil service in the United States, and annual supplements

thereto, will the Assembly arrange for its publication?

2. Will the Assembly unite with the Association in asking the Institute for Government Research or other similar organization to investigate the subject of civil service administration, especially in its relation to the professional branches of service, federal, state, and municipal?

3. If the Library Association will agree upon standards of service, can the Assembly of Civil Service Commissioners recommend either the establishment of a general examination board, the recognition of the results of examinations given by such a board, or the recognition of the results of examinations by other civil service commissions adopting the same standards of service?

The Committee of the American Library Associations consists of W. Dawson Johnston, chairman, St. Paul Public Library; C. B. Roden, Chicago Public Library; C. F. Bowerman, District of Columbia Public Library; P. L. Windsor, University of Illinois Library; M. J. Ferguson, California State Library, and C. F. D. Belden, Boston Public Library.

The Committee of the Assembly of Civil Service Commissions consists of T. C. Murray, New York Municipal Civil Service Commission; Miss Alice R. Taylor, Connecticut State Civil Service Commission, and Mark H. Place, Milwaukee Civil Service Commission.

*

County Government Notes.—*Alameda, California.* The Board of Freeholders of Alameda County, including Oakland, Berkeley, etc., California, have completed and submitted to the voters a new consolidated city and county charter with a city and county manager. A metropolitan council of seven members is the governing board chosen from districts. Berkeley contains two districts; Oakland three; Alameda one, and the rural territory one. The district attorney, assessor, auditor and judges remain elective, but all city and county officers are consolidated or abolished, and there will be but one tax collector, one assessor, one treasurer, etc. The council men are to receive $3,000 per year each, and the charter specifies a minimum salary for the city manager of $12,000. A system of boroughs is provided with borough boards of trustees in each city and town with limited jurisdiction. A fuller discription of the charter will appear here later.

Sacramento, California. The Taxpayers League of Sacramento filed on July 26 a petition of 4,300 names, being one-third more than enough, to compel an election of freeholders to frame a county charter. The purpose of the effort is to apply the city-manager principle to the county government, Sacramento having recently adopted the city-manager plan with proportional representation by an overwhelming vote.

*

Michigan. Efforts are under way already to obtain the 105,000 signatures required to place upon the November 1922 ballot the proposed initiative amendment to the constitution, making it possible for counties to have new forms of government.

*

Milwaukee, Wisconsin. The office of county manager came into existence in Milwaukee county in August, but he is, strictly speaking, only the manager of the county institution under the control of a new board of trustees.

*

Los Angeles, California. The adoption of the present Los Angeles county charter in 1912 struck thirteen elective offices from the ballot and greatly simplified the local mechanisms of government. A further consolidation is now urged by the Municipal League of Los Angeles proposing to consolidate the health officers of the county and of the various cities, in the effort to eliminate overlapping and friction and improve the protection of the public health.

*

The Partnership Principle in the Post Office Department. — Of the ten new cabinet managers of what is now so glibly called "the greatest business on earth," no one has attacked his problem of management with more enthusiasm and more spirit than the postmaster general, Mr. Will H. Hays. It is true that to no other Cabinet member did the situation in his own family, so to speak, offer a more compelling and decisive challenge. The Post Office Department is not alone the largest of the several departments, comprising nearly half of the 650,000–700,000 employes of the Federal government, but the employment conditions and standards of efficiency were probably farther removed from acceptable standards than in any other department.

Properly enough he has called his task "humanizing the Post Office Department." The very promise conveyed in these words has suf-

ficed to arouse a new spirit of hope and helpfulness among the great body of employes. The heartiest assurances of support have come from all quarters, both official and unofficial.

The program for realizing the promise consists evidently of two factors. The one is the establishment of welfare councils in the department proper, in the larger post offices and in the railway mail service. These councils are thoroughly representative in composition. They are the instrument whereby the postmaster general hopes "to develop in the department the spirit that we are 300,000 partners." In the words of Dr. Lee K. Frankel, vice-president of the Metropolitan Life, who is now serving as the director of the welfare division, the councils are empowered "to consider from every angle that may arise anything that affects the welfare and the general condition of the employes. That will include hours of labor, question of wages, and then, besides, all the conditions in the building that make for efficiency in work. That means sanitation, question of lighting, first-aid rooms, leave, and similar matters."

Steps have already been taken under the leadership and inspiration of Director Frankel for the organization of the councils. They are enthusiastically hailed by an editor of one of the organs of the postal employes as "the most progressive step in the advancement of the Postal Service in the history of the Post Office Department."

The second feature of the program "for putting heart into the service" is the elaborate survey of working conditions now being made. Questionnaires containing nearly 200 items are being circulated among all first- and second-class offices for the purpose of ascertaining under what conditions postal employes work. Inquiries are made as to light, air, cleanliness, sanitation and other factors that make for a healthy and wholesome work environment. The answers to these questions, compiled by the way with the aid of representative employes in the given office, are to serve as the basis for the renovation and rehabilitation of such offices as are in need of it. Any fair observer who has traveled much throughout the country knows that there is sore need of such a policy in all too many localities.

These are the features of the new program. When the time comes to record the performances under this program there is little doubt among those who have seen Mr. Hays at work but that they will bulk large.

W. E. Mosher.[1]

II. GOVERNMENTAL RESEARCH CONFERENCE NOTES

A report on Street Cleaning and Snow Removal has been completed by the Minneapolis Bureau. It is based on a year and a half of field work, and is a valuable addition to the surveys of these activities. The report is very full, and many of its suggestions will be useful in other cities.

The San Francisco Bureau has issued an impressive report of its activities for the four years 1917 to 1921. Its list of "effective activities" sets out a long record of successful recommendations. The much shorter list of "non-effective activities" may not have been as ineffective as the bald caption indicates, even though the bureau's efforts were not crowned with success at the moment.

Standardization of Salaries and Grades is the subject of a memorandum by the Philadelphia Bureau to the Civil Service Commission of that city. It outlines in considerable detail the steps to be taken to effect standardization.

A Report on the Performance of Plumbing and Roofing Work by Private Contractors for the division of housing and sanitation in Philadelphia by the Philadelphia Bureau is chiefly of local interest, but presents a thorough study of contracts of this nature and of methods of control.

Business Methods of the Bureau of Hospitals is the title of another report by the Philadelphia Bureau. It has particular reference to stores, property and garages.

A Survey of the Police Bureau of Rochester, New York, has been issued in printed form by the Rochester Bureau. The bureau added to its staff for the purposes of this survey Mr. L. V. Harrison. The report is original in character, and its recommendations will be of interest to other cities.

Parks and Playgrounds in Kansas Cities is a report in tabular form by the Municipal Reference Bureau of the University of Kansas on the areas and costs of lands devoted to these purposes and on the costs of maintainance.

[1] National Institute of Public Administration.

Proposed Increases in Revenue for Chicago Schools is a report by the Chicago Bureau in opposition to the very radical increase proposed in local school income.

Debt Charges and Taxation in 1922 in the city of Cleveland contains an analysis of local finances.

The Bureau of Municipal Research of Philadelphia has been admitted to membership in the Welfare Federation recently organized in that city. The Federation is planning a campaign to finance the budgets of all civic and philanthropic organizations approved and admitted by it, to become operative October 1, 1921.

Lower Merion Township, Pennsylvania (which is part of Philadelphia's suburban zone), through its commissioners, have engaged the Philadelphia Bureau to undertake a study of the township government in all its functions.

Municipal Street Cleaning in Philadelphia was established in two of the city's thirteen districts on January 1, 1921. The Philadelphia Bureau has been largely instrumental in making definite steps toward extending the new functions to the whole city. As a result, while the city council rejected the mayor's proposal to make the city-wide plan effective October 1, the council committed itself to January 1, 1922, as the date for making this extension operative.

The Hospital Accounting System, including a perpetual inventory, is now being installed in the Bureau of Hospitals at the request of the Philadelphia Research Bureau.

The Abatement of Nuisances is covered in a report by the Philadelphia Bureau on the division of housing and sanitation of the Philadelphia health department.

The Study of the Municipal Court of Philadelphia, begun by the local bureau, has been discontinued because of disagreement with the court as to whether the findings should be considered confidential, and because of the impracticability of conforming with the court's request that a study of organization and methods be made simultaneously with an evaluation of the court's social work.

The Development of Personnel Tests is to be undertaken by the Detroit Bureau in co-operation with the Detroit police department. For this purpose, Prof. L. L. Thurstone of the division of applied psychology, of the Carnegie Institute of Technology, has been engaged. It is expected that varying types of written examinations will be corrected with the actual work of policemen in the field, with a view to developing an examination which will prove most effective in selecting competent police officers.

The Tax Supervising and Conservation Commission of Multnomah County has been organized by state legislation, with jurisdiction over the budgets and tax levies of the municipal corporations within the county. This authority covers some eighty municipalities, the principal ones being the City of Portland, the Port of Portland, the Commission of Public Docks, School District No. 1, and Multnomah County. The commission's powers are very broad, and the field for statistical and accounting research large.

Clarence C. Ludwig, accountant for the Rochester Bureau of Municipal Research, has resigned to take the position of executive secretary to the Tax Supervising and Conservation Commission, Portland, Oregon.

The Institute for Public Service conducted during the summer session of New York and Columbia Universities, a school men's and publisher's exhibit of high spots in-for-and-about education. Visitors' questions were answered from reports, catalogues and other materials sent in by hundreds of school men. The exhibits were opposite the men's dormitories of Columbia University at the new offices of the Institute at 1125 Amsterdam Avenue.

Hart C. Cummin, after a year of field work with the Institute for Public Service, has gone to the newly organized Institute for Public Service at Kansas City. He is a Cornell engineer, and brother of Gaylor C. Cummin, former city manager of Jackson and Grand Rapids, Michigan, and now doing field service with the Institute. Hart Cummin's experience includes surveys of Portsmouth, and Cuyhoga Falls, Ohio, engineering and health work in Michigan, tabulation and graphing of growth facts for 210 colleges and 397 professional schools, etc.

The Research Bureau of the Oklahoma City Chamber of Commerce has concluded surveys of sewage disposal, garbage collection, sanitary and storm sewers, river straightening, water mains, fire stations and equipment, as well as reservoir and water supply equipment. The bureau is recommending a bond issue of approximately $6,500,000 for the purpose of improving these facilities.

III. COMMENTS ON CIVIC BETTERMENT

Chicago Appoints Zoning Commission.—The mayor of Chicago has appointed the zoning commission which was authorized some time ago. Mr. Charles Bostrom, commissioner of buildings, has been made chairman.

❋

What One Woman Has Done.—A very active member of the American Civic Association in Pennsylvania has sent five dozen copies of the Association Billboard Bulletin, "Illegal Signs in Pennsylvania," by J. Horace McFarland, to different candidates in the primaries in her district. She has received replies from many of the candidates promising to stop the practice of placing signs on the wire poles. Also, she has personally taken down over five hundred illegal signs in her district. Education and elimination are excellent methods. In any community even one person possessed of civic sense and high courage can change the face of the landscape. It is to be hoped that more Pennsylvanians will go and do likewise.

❋

Civic Contributions by Chambers of Commerce.—The Chamber of Commerce of Attleboro, Massachusetts, has issued a housing report.

The Chamber of Commerce of Houston, Texas, is conducting a health campaign.

The Chamber of Commerce of Appleton, Wisconsin, has fostered a city planning conference which was followed by the appointment of a city planning commission by the mayor of the town.

A division of the Chamber of Commerce in Houston, Texas, is working for the adoption of an ordinance establishing a uniform grade and width of sidewalks in Houston.

The Homestead, Pennsylvania, Chamber of Commerce is responsible for extensive repairs on the bridge crossing the Monongahela River between Homestead and Pittsburgh.

❋

Union of Canadian Municipalities Meets.—The twenty-first annual convention of our sister organization in Canada was held in Ottawa, July 27 to 29. Municipal finances, municipal health and welfare, metropolitan areas and civil service had prominent places on the program. Active city officials from all over the Dominion were present. Americans can take courage from the fact that much the same troubles as bother our cities are being experienced across the border. Mr. Clinton Rogers Woodruff addressed the Union on "The Present Status of the Public Service," and H. W. Dodds on "Recent Developments in Municipal Government in the United States."

A pleasing feature of the occasion was the presentation of an illuminated address to W. D. Lighthall, K.C., upon his retirement as honorary secretary of the Union after twenty years' service. Mr. Lighthall receives the major credit for the present prosperous condition of the Union, which can so largely be traced to his untiring energy in the cause of better government. He has long been an honored vice-president of the National Municipal League. An illuminated address was also presented to Mr. G. S. Wilson, who retired after twenty years' service as assistant secretary.

❋

Memorial Trees in Minneapolis.—In June, the city of Minneapolis dedicated her Victory Memorial Driveway in permanent commemoration of the 555 of her sons who gave their lives in the World War. The exercises were impressive. A high tribute was paid to the leadership and service of Charles M. Loring, an honored life member of the American Civic Association. Said Judge Torrance:

> For more than half a century Charles M. Loring has been identified with every fundamental forward step taken by Minneapolis. He has been distinguished for civic pride. . . . He is the father of the park system of Minneapolis. The first trees in the first park were planted under his direction, and he has with unabated zeal promoted the multiplication and development of parks, playgrounds, fountains, and the beautifying of the city, until Minneapolis bids fair soon to become the garden of America.

Mr. Loring furnished the trees for the memorial and provided a trust fund of $50,000 for their perpetual care. The Hennepin County contingent of the Loyal Legion has created a permanent committee charged with the duty of supervising the care of the trees.

❋

The Kansas City Memorial Tower.—Mr. J. C. Nichols, vice-president of the American Civic Association, is serving in his home town, Kansas City, as vice-chairman of the Liberty Memorial Association with Robert A. Long as chairman. Acting under the advice of Thomas R. Kimball of Omaha, a competition for designs for an appropriate memorial was opened to the

architects and artists of the country. The successful competitor is Horace Van Buren Magonigal, who has designed a tower which he conceives as "the flame of inspiration" typifying the unquenchable spirit of the Great West, "guarded by the spirits of Courage, Honor, Patriotism and Sacrifice, burning forever upon an altar high-erected in the skies, a pillar of cloud by day, a pillar of fire by night."

The pillar will be erected facing the Union Station Plaza, in front of the Union Station, "where East and West meet." On the base of the colossal shrine will appear a dedication:

> To perpetuate the courage, loyalty and sacrifice of the patriots who offered and gave their services, their lives and their all in defence of Liberty and the Nation's honor during the World War.

The rugged setting of the high bluff will add to the majesty of the column which should give to the entrance to Kansas City a character unusual in American cities.

✠

National Advisory Committees on Building and Housing.—The following gentlemen have been named by their respective associations at Secretary Hoover's request to serve on a *Committee on Zones:* Lewis A. Moses, Cleveland, Ohio, National Association of Real Estate Boards; Morris Knowles, Pittsburgh, Pennsylvania, United States Chamber of Commerce; J. Horace McFarland, Harrisburg, Pennsylvania, American Civic Association; Nelson P. Lewis, New York City, National Municipal League and National City Planning Conference; Lawrence Veiller, New York City, National Housing Association.

The Advisory Committee on Building Codes, which has been at work some weeks, is constituted as follows: Ira H. Woolson, chairman, consulting engineer, National Board of Fire Underwriters, New York City; Edwin H. Brown, architect, Minneapolis, Minnesota, chairman Committee on Small Houses, American Institute of Architects; William K. Hatt, professor of civil engineering, Purdue University, Lafayette, Indiana, specialist on structural materials; Rudolph P. Miller, superintendent of buildings, New York City, chairman Building Officials' Conference; J. A. Newlin, in charge of timber tests, United States Forest Products Laboratories, Madison, Wisconsin; Ernest J. Russell, architect, St. Louis, Missouri, well-known authority upon building construction; Joseph R. Worcester, consulting engineer, Boston, Massachusetts, specialist on structural steel construction.

Thus are "the best minds" of the country being placed at the service of all the people.

✠

City Planning in Canton, China.—The mayor of Canton, China, has written to the mayor of San Francisco asking for information concerning all the features of modern city planning. The letter is of such unusual interest that it is reprinted here in the hope that the request for information from the western world may bring to the mayor of Canton expert advice concerning general principles of city planning. The planning or re-planning of a city, like the planning of a house, should be adapted to the daily life of the people who live there. If the population of Canton, China, were removed bodily to the city of Detroit, Michigan, a city of about equal size, many difficulties would undoubtedly develop. For example, the movement of pedestrian and vehicular traffic in China might demand an arrangement quite different from that of the western world. The opportunity for blending the best of the eastern and western science of city planning seems to be at hand.

The letter of the mayor of Canton follows:

> In consequence of the recent demolition of our old city wall, the Canton municipality, an administration just lately established, has as its major functions the remodeling of the city of Canton along modern lines.
>
> We realize that the experiences of city building that have been acquired by the more advanced cities of Western countries would give us invaluable hints in our present stage of municipal development.
>
> Hence, it is the earnest desire of this municipality to profit by such an advantage.
>
> I, therefore, beg to request your kindness to lend us a helping hand by furnishing this office a map of your city, together with such other publications or illustrations concerning or showing your schemes of street planning, drainage, sewerage, playgrounds, civic center, water supply, bridges, water front, electric light, street illumination and tramway system, etc.
>
> I earnestly hope that our request may be favored, and thanking you in anticipation,
>
> I have the honor to be, Sir,
>
> Yours respectfully,
>
> (Signed) Sun Fo,
> *Mayor.*

Harlean James.

THE LAW OF ZONING

By

HERBERT S. SWAN

Zoning Consultant; Executive Secretary, Zoning Committee, New York

A review of the constitutionality of zoning regulations which control buildings in accordance with a general plan of municipal development

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CONTENTS

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THE LAW OF ZONING

Zoning is an exercise, not of the power of eminent domain, but of the police power. When property is taken under the power of eminent domain, compensation must be paid the owner if damage can be shown. No compensation is paid for property taken, or for limitations imposed upon the use of property, under the police power.

I. EMINENT DOMAIN VS. THE POLICE POWER IN ZONING

It is theoretically conceivable that a comprehensive plan of building control might be entered into by resort to the power of eminent domain, but practically such a solution is absolutely impossible. The expense and labor involved in assessing the benefits conferred upon, or the damages suffered by, every lot in the community make such a proceeding unthinkable. If compensation were to be paid every one who felt himself injured, a premium would obviously be placed upon the employment of obstructive methods and the filing of specious claims. Endless litigation would undoubtedly result from any zoning attempted in this manner. If the damages were to be paid, not through the assessment of benefits, but either through increased taxation or through the issuance of bonds, the municipal finances would be strained to the breaking point.

But even assuming that the imposition of protective building regulations were legally and financially possible through the initiation of proceedings condemning such rights in every parcel of real estate within the municipality as the scheme required, the result to the community would be of such questionable value as to make the adoption of a plan of doubtful expediency. Every town, if it is not growing, is at least changing. If a town were once zoned by eminent domain, it would forever after have its future fixed by an inflexible mould preventing all change. Zoning, far from being a method of ossifying a town, is advocated and favored on the ground that it will give direction and plan to a town's growth. When conditions change, the zoning regulations must be changed, so that the building plan of the town shall always be adapted to the city's needs, keeping fully abreast of science and invention as well as the changing habits of the people. This kind of zoning is impossible by eminent domain. It can be obtained only through the exercise of the police power.

II. SCOPE OF THE POLICE POWER

How broad a scope has the police power? The police power, of course, extends to the public health, morals and safety. But the power of the state by appropriate legislation to provide for the public convenience, stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. The United States supreme court has held that the police power of a state embraces regulations designed to promote the public convenience or the general prosperity, as well as those to promote public health, morals or safety; it is not confined to the suppression of what is offensive, disorderly or unsanitary, but extends to what is for the greatest welfare of the state.

A still more extensive scope was given to the police power in *Noble State*

Bank v. Haskell (31 Sup. Ct., 186; 1911). In this case the court stated:

> It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.

The fourteenth amendment to the constitution does not curtail the police power of the states when properly exercised. It was not designed to interfere with the police power of the state "to prescribe regulations, to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources and add to its wealth and prosperity."

In delivering the opinion of the court in the case of *Eubank v. Richmond*, Justice McKenna made the following observations regarding the extent and scope of the police power:

> That power (the police power) we have defined as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals and safety, but to those which promote the public convenience or the general prosperity. But necessarily it has limits and must stop when it encounters the prohibitions of the constitution. A clash will not, however, be lightly inferred. Governmental power must be flexible and adaptive. Exigencies arise, or even conditions less peremptory, which may call for or suggest legislation, and it may be a struggle in judgment to decide whether it must yield to the higher considerations expressed and determined by the provisions of the constitution.

Zoning is designed to promote not only the public health, morals and safety, but also the public convenience and general prosperity of the community. If the police powers extended only to the public health, morals and safety, it might be difficult in certain instances to show conclusively that every detail of a zoning scheme came within a competent exercise of the police power. But with the scope of the police power so extended as to include the promotion of the public comfort and convenience, the addition of wealth and prosperity to the state, the increase of its industry, and the development of its resources, it is hoped that even minor features of it can be shown to be a legitimate exercise of the police power.

Although the United States supreme court refrains from any attempt to define with exact precision the limits of the police power, its disposition is, nevertheless, to favor the validity of laws relating to matters completely within the territory of the state enacting them. It will interfere with local legislative authority, especially when its action is approved by the highest court of the state whose people are directly concerned, only when it is plain and palpable that it has no real or substantial relation to the public health, safety, morals or general welfare.[1]

III. DEVELOPING CHARACTER OF THE POLICE POWER

The development of the police power to cover new needs is a most interesting phase of our jurisprudence. The courts have been asked to pass upon the validity of each new exercise or extension of that power, with the result that today it is applied to situations to which a generation ago nobody would have thought of applying it. In this connection the remarks of Mr. Justice Kramer are of the greatest interest.[2]

> No one, today, I take it, would question the right of a municipality, under its police power, lawfully to limit to certain districts

[1] *Cusack* v. *City of Chicago*, 37 Sup. Ct., 192 (1917).

[2] *State ex rel. Morris* v. *Osborn*, 13 Ohio Law Reporter 22 (1920).

slaughter houses, corrals, livery stables, laundries, carpet-beating establishments, etc. Not only would we consider that there was no question that this might lawfully be done, but we would consider that there never could have been any question that it could be done. Yet the books disclose that the validity of the laws so limiting these industries were attacked in the courts upon precisely the same grounds as are urged against the ordinance here in question. The law has not changed, but the application of the law has kept pace with changed conditions, conditions both material and of public thought. These conditions have so changed, since it was considered the right of the state to interfere with the use of private property, even to the extent of limiting its use as a slaughter-house, was debatable, that it is now held that regulations limiting the height of buildings, the material to be used in their construction, and all of the other minute limitations of building ordinances, fire district ordinances, etc., are too well established to be questioned.

The development in the application of the law, in this regard, has been in sympathy with the change which has taken place generally from the conception that the law should jealousy guard the right of the individual to use his property as he saw fit, subject only to the condition that he did not maintain a public nuisance thereon, to the conception that the state or community has a very definite interest in the use of private property, and that the use of such property may be very broadly limited in the interests of the community in general.

IV. CLASSIFICATION PERMISSIBLE UNDER THE POLICE POWER

In a properly drawn zoning ordinance there is no infringement of the constitutional guarantee of equality. It is true that the equal protection of the laws guaranteed by the constitution is one of the most important limitations upon what may be done under the police power. But this guarantee means that the government shall not impose particular burdens upon individuals to meet dangers for which they cannot in justice be held responsible. And that all legislative discriminations or classifications shall be justified by differences of status, act or occupation corresponding to the difference of legislative measure. Although the idea of equality excludes in principle both particular burdens and special privileges, it does, however, admit of reasonable classification. (Freund, Police Power, Sec. 611.)

The classification of a zoning scheme must either be based directly on the purposes for which the police power may be exercised, or it must be justified by differences in the injury inflicted on vested interests. To justify, for instance, the exclusion of future stores, and factories from residence districts while an occasional and out-of-place store or factory now located in such a district is allowed to remain unmolested, it must appear either that the new stores and factories, if constructed in residence districts, would be more prejudicial to the public health, safety or general welfare than the existing ones, or that while equally as prejudicial, the forcible expulsion of the latter would so seriously interfere with existing property rights as to render such a course of doubtful expediency.

In other words, there must be a fair relationship between the public good to be secured and the private injury suffered. The means adopted must be suitable to the end in view, impartial in its operation, and not unduly oppressive upon individuals. At the same time that it has a real and substantial relation to the purpose to be accomplished, it must not interfere with private rights beyond the necessities of the situation.

More stringent regulations for buildings in private house districts than in apartment house districts, are not justified on the ground that they are more important to the public health, safety or general welfare in the former than in the latter, but on the ground

that if they were applied to the latter they would so seriously interfere with existing property values as to make them of doubtful expediency. The application of private house standards to apartment house neighborhoods would discriminate so sharply between the vacant and the improved land in such localities, as practically to confiscate a large part of their value. If apartment house standards were, on the other hand, applied to private house districts, they would be so lax as practically to be inoperative. Applying private house standards to private house districts and apartment house standards to apartment house districts obviates both of these difficulties and treats each type of development according to its own peculiar needs.

In the same manner an isolated building line established as it were, merely for the sake of widening a particular street, or for the purpose of enhancing the appearance and uniformity of the buildings upon it, would undoubtedly have to be established through condemnation. Such a building line would find no greater justification in the police power than a health order, for instance, requiring all children residing in flat roof houses or having red hair to be vaccinated for smallpox.

But a building line laid down as part of a comprehensive zoning scheme affecting every plot in the community rests on fundamentally different grounds. It does not affect a particular street, it affects all streets throughout the city similarly situated and developed in like manner. It does not require a given portion of the lot to be left open in front regardless of the lot depth, a requirement which would bear unequally upon owners having lots of different depths; it merely stipulates where part of the open space required in the case of every lot shall be provided, thus regulating the location of front yards in the same manner that it regulates the location of rear yards, side yards and other open spaces. Under a zoning plan the provision of a building line, in other words, does not increase the proportionate amount of open space with which each lot must be equipped for the area that must be left vacant is the same for all lots within a district—it simply prescribes where part of this open space must be located. Even if no building line were required by a zoning scheme the percentage of the lot area which would have to be left unencumbered by buildings, would be identically the same for structures of a given type.

In the past the freedom enjoyed by every owner to erect his building on the street line, has seriously prejudiced the highest residential development of many streets. There is probably nothing that enhances the attractiveness of a street with private homes more than an open strip of ground between the street line and the building line. Setting back the houses permits the maintenance of a front lawn with grass and trees; it promotes family privacy; it shuts out the dust and noise of the street; and it affords additional light and air. And yet in the absence of any obligation binding all the owners within a block to observe a minimum setback line, each owner has felt it necessary to build his house on the street line. His own self-protection has demanded this. If he did not erect his house on the sidewalk, his neighbors on either side might. Being pocketed between two buildings, his house, instead of facing a street, would really front upon an outer court. Countless owners trusting to the comity of their neighbors have had their values ruined by themselves observing the amenities of the district.

If we wish to preserve the front yards in our residence districts we cannot permit a situation to continue which rewards the despoiler and blackjacks the benefactor of a neighborhood.

V. INCIDENCE OF EXERCISE ON INDIVIDUAL OF NO CONSEQUENCE

Zoning is not designed to operate oppressively upon any owner or upon any group of owners. Each scheme is framed with the greatest consideration for property rights commensurate with the public welfare. But despite this fact certain owners will no doubt feel themselves aggrieved. This however, does not make the law any less valid so long as its provisions are not arbitrary. It is believed that the regulations adopted in any town may meet all the tests of constitutionality laid down by the United States supreme court. In *Barbier v. Connolly* (113 U. S., 27; 1885), the supreme court discussed the question as follows:

> Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon any one, but to promote, with as little individual inconvenience as possible, the general good. Though in many respects necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons, similarly situated, is not within the (14th) amendment.

The attitude of the United States supreme court toward zoning was discussed in concise and clear language in sustaining the constitutionality of a zoning ordinance in Little Rock, Ark.[3]

> So long as the regulation in question is not shown to be clearly unreasonable and arbitrary, and operates uniformly upon all persons, similarly situated in the particular district, the district itself not appearing to have been arbitrarily selected, it cannot be judicially declared that there is a deprivation of property without due process of law, or denial of the equal protection of the law, within the meaning of the 14th amendment.

Instances may, of course, occur in any zoning ordinance where it will appear that some section or sections had better be placed in one zone than in another, but clearly this is not a matter for the court to determine. If the divisions made by the ordinance are well within the legislative discretion, then they are not to be held arbitrary or unreasonable by the court. The statement by Mr. Justice Kramer in sustaining the validity of the East Cleveland, Ohio, zoning ordinance, puts this point so well that it is difficult to improve upon it.

> In every such ordinance, where territorial classification is made, as in those establishing fire limits, the line is bound to permit to be done, on the property immediately adjacent to the line outside of the district, what is prohibited on that immediately adjacent within the district. If this constituted arbitrary discrimination, no territorial classification could be lawful. (*Supra.*)

The validity of zoning is, therefore, not to be tested by its effect upon any particular piece of property affected. The question is much bigger, for it involves the welfare and prosperity of the entire community.

VI. ÆSTHETICS BANNED FROM CONSIDERATION UNDER POLICE POWER

Aesthetic considerations as such, do not afford sufficient grounds for imposing limitations upon the use of property under the police power. And yet if the primary and substantive purpose of the proposed legislation is such as to

[3] *Reinman* v. *Little Rock*, 35 Sup. Ct. 511 (1914).

justify the act under the police power considerations of taste and beauty may enter in as auxiliary. (*Welch v. Swasey*, 193 Mass. 375.) It is only in an incidental way that in carrying out that cardinal object, regard may be given to considerations bearing upon municipal adornment or embellishment. In so far as zoning is concerned, the enhancement of attractiveness of the town may be considered only when the dominant aim in respect to laying out the districts has primary regard to other factors lawfully within the scope of the police power; and then it cannot be considered as the main purpose to be attained, but only as subservient to another or other main ends recognized as sufficient under the general principles governing the exercise of the police power. (Opinion of the Justices, Mass., 127 N. E. R. 525; 1920.)

VII. LEGISLATURE SOLE JUDGE AS TO PROPRIETY OF LEGISLATION

In determining whether the provisions of an ordinance bring it within a purview of the police power, it is not necessary for the court to find that facts exist which justify its enactment. If a state of facts can reasonably be presumed to exist which would justify the legislation, the court must presume that it did exist and that the ordinance was passed for that reason. If no state of facts could exist to justify the ordinance, then it may be declared void because in excess of legislative power. Referring to this point the leading case of *Munn v. Illinois* (94 U. S., 113, 132) said:

> For our purposes we must assume that, if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us the question is one of power, not of expediency. If no state of circumstances could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the state. But if it could, we must presume it did. In the propriety of legislative interference, within the scope of legislative power, the legislature is the exclusive judge.

A like view was expressed in *Tome Telephone Co.* v. *Los Angeles* (211 U. S., 265, 281).

> It is a well settled rule of constitutional exposition that if a statute may or may not be, according to circumstances, within the limits of legislative authority, the existence of the circumstances necessary to support it must be presumed.

The same thought was also expressed by the court in *Jacobson* v. *Massachusetts* (197 U. S., 11, 35).

VIII. PIECEMEAL VS. COMPREHENSIVE ZONING

A piecemeal zoning ordinance applying to only certain parts of a town might very well be adjudged unreasonable, arbitrary and discriminatory, in that other sections of the town situated to all intents and purposes in exactly the same manner as those affected by the regulations, were left absolutely untouched. It might plausibly even be condemned on the ground that it restricted certain owners to benefit other owners. But where a comprehensive, town-wide building plan is adopted, embracing all the land within the town limits and treating each section according to its own peculiar needs, present and prospective, the land assigned to each of the different districts will be bound to benefit by the regulations, the land designated for business and industry no less than the land placed in the residential classification, for each will have been zoned for its highest and most valuable use. A comprehensive zoning ordinance, unlike a piecemeal one, preserves the equality of classification in that all the different neighborhoods similarly situ-

ated and of like character are treated in a like manner. There is, moreover, no denial of equal protection of the laws because all property within a designated district is treated alike and stands on identically the same footing. (Opinion of the Justices, Mass., 127 N. E. R. 525, 1920.)

The purpose of a zoning law is to protect all classes of buildings—residential buildings, business buildings, factory buildings—so that each class shall enjoy the maximum freedom and opportunity for development within its own sphere. The obligations imposed upon each class, when it encroaches upon the territory outside its sphere, are only such as are essential to assure other classes of a like freedom and development within their respective spheres. Preferential rights give rise to reciprocal responsibilities but the sole purpose of the responsibilities imposed upon each particular class of buildings under the law, is to guarantee the rights and make permanent the protection enjoyed by all classes.

In his dissenting opinion in the case of *State ex rel Lachtman* v. *Houghton* (158 N. W., 1017; 1916), Mr. Justice Hallan brought out this idea very forcibly.

> It is said this relator has a vested right guaranteed him by the constitution to damage his neighbors' homes by devoting his lot to a use incongruous with the use of property in the vicinity, and that no power can stop him, for to stop this damage would be to take his property without due process of law. If it be said that the owner of a lot in a district of homes has the vested right to use it as he sees fit, notwithstanding the damage to his neighbor, then what of the right of his neighbor whose property value he destroys. Has the one a vested right to destroy and the other no right at all to be protected? In my judgment this slaughter of property value is something the legislature has power to prevent. Courts have exercised the power to abate what they have denominated nuisances at common law. This grocery store was not a nuisance at common law. But it does not follow that the legislature may not regulate the location of business structures that were not nuisances at common law. It may do so.

Mr. Justice Kramer also very emphatically endorsed this view in his opinion in the case of *People ex rel Morris* v. *Osborn* (*supra*) sustaining the East Cleveland zoning ordinance excluding apartments from private house districts.

IX. ZONING REGULATIONS NO ENCUMBRANCE UPON REAL ESTATE

That the adoption of a zoning ordinance does not create an encumbrance upon real estate was definitely settled by the New York Court of Appeals in sustaining the validity of the zoning resolution in New York City.

This resolution affected every square foot of land in the five boroughs of the greater city. Three classes of use districts were established—residence districts, business districts, and unrestricted districts; five classes of area districts—The A, B, C, D, and E area districts, and five classes of height districts, the one, the one-and-a-quarter, the one-and-a-half, the two, and the two-and-one-half times height districts. The size of courts and yards, and the percentage of space that must be left open on every lot varied in each of the five area districts. The height of buildings was restricted in the different height districts. The maximum height allowed in each case being indicated by the numeral constituting the name of the district, the numeral in each case being a multiple of the street width in front of the premises.

The court of appeals, the highest court in New York, sustained this resolution as being a valid exercise of the police power July 7, 1920, in the case of *Lincoln Trust Co.* v. *Williams*

Building Corporation (229 N. Y. 313). The suit came before the appellate court as an appeal from a judgment of the appellate division; first department, reversing, two of the justices dissenting, a judgment of the special term directing specific performance of a contract for the purchase and sale of real estate. The land which the defendant contracted to purchase was in a one and one-half times height district, a B area district, and a residence use district.

This action was brought by a vendor against a vendee to procure a judgment directing specific performance of a contract for the purchase and sale of real estate in the city of New York. The contract was dated August 21, 1916. The purchase price was $50,000, $2,000 of which was paid at the time of the execution of the contract, $3,000 agreed to be paid on delivery of the deed, and the balance to be secured by mortgages. The answer alleged that the contract provided the property was to be conveyed "free from all encumbrances" except certain ones specified, and that it was, in fact, subject to an encumbrance by virtue of the building zone ordinance which justified defendant in refusing to accept the title. The plaintiff asked that defendant be required to perform specifically and defendant asked that the complaint be dismissed and plaintiff be required to return the amount paid. The reply put in issue the validity of such resolution.

The resolution referred to was passed July 25, 1916. The restrictions imposed were due to the zoning law. The defendant according to the findings, did not, when it entered into the contract, have actual knowledge of the existence of the resolution, but nevertheless, both parties were presumed to have such knowledge.

According to the plaintiff the case reduced itself to a perfect dilemma.

If the ordinance was a valid exercise of the police power not amounting to an encumbrance, it obviously furnished no defense as contributing an encumbrance.

If on the other hand, the ordinance, if held valid, would constitute a real encumbrance on the property, then it necessarily followed that the ordinance was unconstitutional and void, because it is impossible to create a valid encumbrance on real estate without compensation.

A valid statutory encumbrance on real estate created without compensation is a contradiction in terms. The legislature cannot encumber property without paying for it. It can impose police regulations on property without paying for it but such regulations are not encumbrances.

Faced by these facts the Court of Appeals in passing upon the case came out unanimously with an opinion squarely supporting the constitutionality of the New York zoning resolution.

> In a great metropolis like New York, in which the public health, welfare, convenience and common good are to be considered, I am of the opinion that the resolution was not an incumbrance, since it was a proper exercise of the police power. The exercise of such power, within constitutional limitations, depends largely upon the discretion and good judgment of the municipal authorities, with which the courts are reluctant to interfere.
>
> The resolution in question simply regulates the use of property in the districts affected. It does not discriminate between owners. It is applicable to all alike. Therefore the general and well-nigh universal rule should be applied, viz., that where a person agrees to purchase real estate, which, at the time, is restricted by laws or ordinances he will be deemed to have entered into the contract subject to the same. He cannot thereafter be heard to object to taking the title because of such restrictions. (*Bennett* v. *Buchan*, 76 N. Y. 386.)
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> . . . . . .
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> I am of the opinion that the resolution in question is a valid one; that it does not constitute an

encumbrance upon the property which defendant agreed to purchase; and that it should be required to specifically perform the contract.

X. COMPREHENSIVE ZONING UPHELD IN MASSACHUSETTS

Prior to the adoption of the statute of 1920, enabling any city or town in the commonwealth to pass zoning regulations the legislature of Massachusetts in 1920 submitted a draft of the proposed act to the justices of the Supreme Judicial Court, with a request for an opinion as to its constitutionality.

Under this act buildings to be used for particular industries or trades can be either restricted to specified parts of a municipality and excluded from designated districts, or if situated in certain parts made subject to special regulations as to their construction or use; dwellings and apartments, too, can be either restricted to certain neighborhoods and excluded from others, or if situated in certain localities made comformable to special regulations in respect of their construction or use which are not applicable to such buildings in other parts of the municipality. Every city or town can be zoned for these purposes.

Under this act owners of vacant land in certain parts of a municipality might be utterly prohibited from erecting a building for any residential use whatever, and compelled to devote it exclusively to a designated industry. Other owners in other parts of the community might be required to hold their vacant land solely for residential purposes, being thus deprived of using it for commerce, trade or industry.

Though intimating that questions would doubtlessly arise under the proposed act which could not be foreseen and might prove perplexing, the justices perceived nothing in it contrary to either the state or the national constitution:

> We are of the opinion that the proposed statute cannot be pronounced on its face contrary to any of the provisions of the Federal Constitution or its Amendments. The segregation of manufacturing, commercial and mercantile business of various kinds to particular localities, when exercised with reason, may be thought to bear a rational relation to the health and safety of the community. We do not think it can be said that circumstances do not exist in connection with the ordinary operation of such kinds of business which increase the risk of fire, and which render life less secure to those living in homes in close proximity. Health and security from injury of children and the old and feeble and otherwise less robust portion of the public, well may be thought to be promoted by requiring that dwelling houses be separated from the territory devoted to trade and industry, the suppression and prevention of disorder, the extinguishment of fires and the enforcement of regulations for street traffic, and other ordinances designed rightly to promote the general welfare, may be facilitated by the establishment of zones or districts for business as distinguished from residence. Conversely, the actual health and safety of the community may be aided by excluding from areas devoted to residence the confusion and danger of fire, contagion and disorder which in greater or less degree attach to the location of stores, shops and factories. Regular and efficient transportation of the breadwinners to and from places of labor may be expedited. Construction and repair of streets may be rendered easier and less expensive if heavy traffic is confined to specified streets by the business there carried on. It is easy to imagine ordinances enacted under the assumed authority of the proposed act which would exceed the constitutional limits of the police power and be an indefensible invasion of private rights. But it cannot be presumed in advance that municipalities will go outside their just powers and unwarrantably interfere with property. Cases of that sort must be dealt with, if and when they arise.
>
> We answer that, in our opinion, the proposed act if enacted into law would be constitutional.

XI. EXCLUSION OF APARTMENTS FROM PRIVATE HOUSE DISTRICTS

In *State of Ohio ex rel Morris* v. *Osborn* (*supra*) the Court of Common Pleas of Cuyahoga County found the

zoning ordinance of East Cleveland to be a valid exercise of the police power. On July 15, 1919, the city of East Cleveland passed an ordinance adopting a building zone plan, establishing and fixing the boundaries of building zones, and regulating the location, erection, use and maintenance of all buildings. By this ordinance the city was divided into four different classes of zones, zones "A", "B", "C", and "D" respectively as shown upon the building zone map which was a part of the ordinance. The territory in zone "A" was left unrestricted; that in zone "B" was restricted against manufacturing; that in zone "C" was restricted against manufacturing and business; and that in zone "D" was restricted against manufacturing, business and tenements.

Section 5 of the ordinance provided that—

> No building or buildings shall be hereafter located, erected, used or maintained in Zone "D" as a tenement building, place of business, or manufacturing plant, intending hereby to restrict Zone "D" for use as single and double residence property only.

Prior to the adoption of the ordinance the relator acquired certain property and filed plans for eight apartments. The issuance of a permit for the erection of these apartments was first held up by the building inspector until after the passage of the zoning ordinance and then it was refused on the ground that the property in question was situated in Zone "D" where apartments were prohibited by the terms of the ordinance. The relator maintained that the ordinance was designed to prevent the erection of apartments on his land.

The action instituted was a mandamus to compel the building inspector to issue the necessary permit on the ground that the zoning ordinance was void in that it worked a taking of property without compensation, and without due process of law, and that it denied equal protection of the laws and that it violated the constitutions of Ohio and the United States. The defendant's answer was that the ordinance was a valid exercise of the police power.

The claim that the ordinance constituted a taking of private property without due process of law, received scant courtesy from the court in sustaining the ordinance. Said the court:

> It has been held so frequently and so uniformly that the state may, in the lawful exercise of its police power, impose restrictions upon the use of private property, and that such restrictions do not constitute a "taking" of property within the inhibition of the 14th Amendment of the Constitution of the United States, that that question seems no longer open to discussion.

The ordinance according to the court could be invalid only (1) if it did not come within the purview of the police power of promoting the health, morals and peace and welfare of the community, or (2) if it were unreasonable, arbitrary, discriminatory, and not uniform in operation.

In sustaining the ordinance, Mr. Justice Kramer said in part:

> As a matter of common knowledge, of which the court may take judicial notice (16 Cyc., 582) it (the apartment house) shuts off the light and air from its neighbors, it invades their privacy, it spreads smoke and soot throughout the neighborhood. The noise of constant deliveries is almost continuous. The fire hazard is recognized to be increased. The number of people passing in and out, render immoral practices therein more difficult of detection and suppression. The light, air and ventilation are necessarily limited, from the nature of its construction. The danger of the spread of infectious disease is undoubtedly increased, however little, where a number of families use a common hallway, and common and rear stairways.
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> . . . . .
>
> With the growth of its population, it appears to be practically certain that unless restricted,

the greater part of East Cleveland will be built up with apartments, and the home owners must choose either to adopt apartment life or abandon their depreciated property, and move out of the city or into its more remote parts.

If the claim of the relator here is sound, a city of private homes, grass plots, trees and open spaces, with the civic pride and quality of citizenship which is usually found in such circumstances, is powerless to protect itself against the obliteration of its private residence districts, by apartments, which shut out the sun and sky from its streets, and one another, and are generally owned by those whose greatest interest is in the revenue that the building will produce. If such is the law, it must be conceded that it is unfortunate.

. . . . .

It seems eminently fair to restrict the apartment builder to a limited area, where his use of his property will do the least damage to others, and to the community. The necessities or conveniences of those who live in them will be served thus with the least sacrifice of the necessities and convenience of others. Whatever of the burden arising from apartments there are, will be borne by those whose purposes they serve, and not shifted to the other property owners of the town, to make their property unfit for use as a home.

XII. LIMITATIONS ON THE HEIGHT OF BUILDINGS

In *Attorney General* v. *Williams* (174 Mass., 476, 55 N. E., 77, 47 R. A., 314; 1899), the Supreme Judicial Court of Massachusetts stated that the control of the heights of buildings about Copley Square, under the power of eminent domain might, in fact, have been sustained under the police power. This particular act limited the height of buildings to ninety feet on three sides and to one hundred feet on the fourth side of the square. The court in part expressed its opinion as follows:

Regulations in regard to the height and mode of construction of buildings in cities are often made by legislative enactments, in the exercise of the police power, for the safety, comfort and convenience of the people, and for the benefit of property owners generally. The right to make such regulations is too well established to be questioned (citing cases). In view of the kind of buildings erected on streets about Copley Square, and the uses to which some of these buildings are put, it would be hard to say that this statute might not have been passed in the exercise of the police power, as other statutes, regulating the erection of buildings in cities are commonly passed.

In *Welch* v. *Swasey* (193 Mass., 364) the Massachusetts Supreme Judicial Court declared the following substantive propositions:

(1) That the state may, in the exercise of the police power, limit the height of buildings to be erected in cities when, in its judgment, the public health or public safety so require;

(2) That the legislature, in regulating the height of buildings in a city, may permit them to be higher in the sections where there is a call for office space than in the residential portions, although the streets in the former may be narrower than in the latter;

(3) That the legislature may delegate to a commission the power to determine the boundaries or the section of a city in which the buildings of different heights, as determined by the legislature shall be erected;

(4) That, where matters of local self-government may be entrusted to the inhabitants of towns, the legislature may delegate to a commission to be appointed by it the determination of the heights of buildings, to be erected in different places within the city, where the statute provides for a general limitation upon the height to which buildings can be erected; and

(5) That the prohibition against the erection of a building of a greater height than 80 feet in the residential portion of the city, unless the width of the street shall be at least one-half its height, is not so unreasonable as to make the regulations invalid.

The act questioned in this case divided the city of Boston into two districts—District A and District B. In District A, the business section of the city, buildings were limited to a height of one hundred and twenty-five feet; in District B, the residential section of the city, to a height of eighty feet, except on streets more than sixty-four

feet wide. On such streets a building might be erected to a height equal to one and one-fourth times the width of the street, subject to the condition that it could not exceed eighty feet unless its width on each and every abutting public street was at least half of its height. In neither District A nor District B, however, could a building be erected to a greater height than two and one-half times the width of the widest abutting street.

The two principal questions presented to the court for determination in this case were: First, can the legislature in the exercise of the police power, limit the height of buildings in cities so that none can be erected above a prescribed number of feet; and second, can it classify parts of a city so that in some parts one height is prescribed and in another a different height?

The Court answered both of these questions in the affirmative. In regard to the first, it said:

> The erection of very high buildings in cities, especially upon narrow streets, may be carried so far as materially to exclude sunshine, light and air, and thus to affect the public health. It may also increase the danger to persons and property from fire, and be a subject for legislation on that ground.
>
> These are proper subjects for consideration in determination whether, in a given case, rights or property in the use of land should be interfered with for the public good. In *Atty Gen.* v. *Williams* (Knowlton v. Williams), 174 Mass., 476, 47 L. R. A., 314, 55 N. E. 77, this Court said: "Regulations in regard to the height and mode of construction of buildings in cities are often made by legislative enactments, in the exercise of the police power, for the safety, comfort, and convenience of the people and for the benefit of property owners generally. The right to make such regulations is too well established to be questioned."
>
> The next question is whether the general court may establish different heights for different neighborhoods, according to their conditions and the uses to which the property in them is put. . . . The value of land and the demand for space in those parts of Boston where the greater part of the buildings are used for purposes of business or commerce is such as to call for buildings of greater height than are needed in those parts of the city where the greater part of the buildings are used for residential purposes. It was therefore reasonable to provide in the statute, that buildings might be erected to a greater height in the former parts of the city than in the latter, even if some of the streets in the former are narrower than those in the latter. . . . Such restrictions in this country are of very recent origin and they are still uncommon. Unless they place the limited height at an extreme point, beyond which hardly anyone would ever wish to go, they should be imposed only in reference to the uses for which the real estate probably will be needed, and the manner in which the land is laid out, and the nature of the approaches to it.

The Court of Appeals of Maryland, held in *Cochran* v. *Preston* (108 Md., 220; 1908), that the right to make reasonable regulations concerning the height of buildings in a city is within the police power of the state. The act in this case (St. 1904, Ch. 42), prohibited the erection of any building except churches, on the square about Washington Monument, to exceed in height 70 feet above the surface of the street at the base of the monument. The Washington Monument stands in the center of this area, and about it are grouped the Peabody Library and Art Gallery, several statues in open squares, and private residences containing valuable works of art. The court held that the object of the act was not merely to preserve the architectural beauty of the locality, but was also to avoid the increased danger which the great fire that devastated a large part of Baltimore shortly before the passage of the act showed to arise from tall buildings in the event of a general conflagration. Since the object of the act was to promote the public welfare and the means prescribed were appropriate thereto,

the statute was valid and did not constitute a denial of the equal protection of the law.

It was no objection to the act that the owners of land below the point designated for the measurement of the height limit might build higher structures than the owners of the land above them, the ground at that point being hilly, as the danger from fire is greater in one case than in the other. The fact that churches were exempt from the act was no objection, since there is not the same necessity for regulating the height of churches as of other buildings.

In upholding the constitutionality of the Boston height limitations the United States Supreme Court through Mr. Justice Peckham, used in part the following language (214 U. S. 91–1909):

> It might well be supposed that taller buildings in the commercial section of the city might be less dangerous in case of fire than in the residential portion. The Court is not familiar with the actual facts, but it may be that in this limited commercial area the height of the buildings are generally of fireproof construction; that the fire engines are more numerous and much closer together than in the residential portion, and that an unlimited supply of salt water can be more readily introduced from the harbor into the pipes, and that few women or children are found there in the daytime and very few people sleep there at night. And there may, in the residential part be more wooden buildings, the fire apparatus may be more widely scattered and so situated that it would be more difficult to obtain the necessary amount of water, as the residence quarters are more remote from the waterfront, that many women and children spend the day in that section, and the opinion is not strained that an undiscovered fire at night might cause great loss of life in a very high apartment house in that district. These are matters which it must be presumed were known to the legislature and whether or not such were the facts was a question among others, for the legislature to determine. They are asserted as facts in the brief of the counsel for the City of Boston. If they are, it would seem that ample justification is therein found for the passage of the statutes, and that the plaintiff-in-error is not entitled to compensation for the reasonable interference with his property rights by the statutes. That in addition to these sufficient facts, consideration of an aesthetic nature also entered into the reasons for their passage, would not invalidate them. Under these circumstances there is no unreasonable interference with the rights of property of the plaintiff-in-error, nor do the statutes deprive him of the equal protection of the laws. The reasons contained in the opinion of the State Court are in our view sufficient to justify their enactment.

XIII ESTABLISHMENT OF BUILDING LINES

By an act of the General Assembly of Virginia, passed March 14, 1908, councils of cities and towns are authorized, among other things, "to make regulations concerning the building of houses in the city or town, and in their discretion—in particular districts or along particular streets, to prescribe and establish building lines, or to require property owners in certain localities or districts to leave a certain percentage of lots free from buildings, and to regulate the height of buildings." (Acts 1908, pp. 623, 624.) By virtue of this act, the city council of Richmond passed an ordinance "that whenever the owners of two-thirds of the property abutting on any street shall, in writing, request the committee on streets to establish a building line on the side of the square on which their property fronts, the said committee shall establish such line, so that the same shall not be less than five feet nor more than thirty feet from the street."

The validity of a building line regulation under the above ordinance came before the Supreme Court of Appeals of Virginia in *Eubank* v. *City of Richmond*, (110 Va., 749, 67 S. E., 376) decided March 10, 1910. In delivering the opinion of the court, Judge Whittle

refers to the case of *Welch* v. *Swasey*, and concludes as follows:

> In the present case the statute is neither unreasonable nor unusual, and we are justified in concluding that it was passed by the legislature in good faith and in the interest of the health, safety, comfort or convenience of the public and for the benefit of the property owners, generally who are affected by its provisions, and that the enactment tends to accomplish all, or at least some, of these objects. The validity of such legislation is generally recognized and upheld.

The United States Supreme Court found the regulation unconstitutional, its finding being based on the fact that under the ordinance a building line must be established whenever two-thirds of the property owners abutting on any street shall petition the committee on streets to establish such a line. The court held that an important power of this kind cannot be vested in any number of property owners with power to use as they see fit, and presumably in their own interest and not in the interest of public comfort or convenience. Though the particular ordinance in question was held to be unconstitutional, the opinion of the state court and the general treatment of the case by the Supreme Court of the United States gives considerable ground for the hope that building line regulations properly based will be held constitutional. This is clearly the view of the matter taken by the city of Richmond, for, following the above decision by the Supreme Court of the United States, it passed another ordinance (April 22, 1913) prescribing the procedure by which building lines may be established in the discretion of the council in particular districts or along particular lines.

XIV ZONING BUILDINGS ACCORDING TO USE

A great number of laws and ordinances excluding business and industry from residence districts have been held to be a valid exercise of the police power.

In *ex parte Quong Wo.* (118 Pac., 714; 1911), the Supreme Court of California declared the ordinance dividing Los Angeles into residential and industrial districts constitutional. This ordinance, which was passed in 1909, subdivided the entire city, with the exception of two suburbs, into one residential and 25 industrial districts, the residential district comprising the whole districted territory exclusive of the areas within the several industrial districts. In addition to the industrial districts, there were 48 districts known as "residence exceptions" in the residential district that were exempt from the regulations applicable to the residential district and in which business was permitted subject to certain conditions. The industrial districts varied in size from a solitary lot to two square miles.

All kinds of business and manufacturing were unrestrained in the industrial districts. Only certain specified businesses were excluded from the residential district. The businesses not especially excluded were allowed in the residential district. All but the very lightest manufacturing was prohibited in the residential district. The less offensive business and manufacturing establishments excluded from the residential district could be carried on in the "residence exceptions." Frontage consents were necessary for the creation of new "residence exceptions."

On the passage of this ordinance, among other businesses, 110 Chinese and Japanese laundries found themselves in the residential district. The city immediately undertook to remove them to the industrial districts. Quong Wo, one of them, appealed to the Supreme Court for protection.

The court in upholding the ordinance

stated that it could not take judicial notice that there had been unjust discrimination in excepting small parcels from the residential district of the city as established by ordinance and adding them to the industrial district; the presumption being in favor of the legality of the action of the legislative body. That small parcels, consisting of one city lot, were excepted by the council from the residence district and added to the industrial district did not of itself show unjust discrimination.

The court, furthermore, held that lawful occupations, such as laundries, might be confined to certain limits in the city wherever such restrictions might reasonably be found necessary to protect the public health, morals and comfort. An ordinance prohibiting the maintenance of public laundries and workhouses in the residence district could not be said to be unreasonable and invalid in the absence of facts showing unjust discrimination, though large parts of the district might be sparsely settled. Whether restrictions upon the operation of a business in certain portions of a city are reasonably necessary for the protection of the public health, safety and welfare, the court held was a subject to be determined by the council. Such action would not be disturbed by the court unless the regulations had no relations to the public health, safety or welfare, or unless they clearly invaded personal or property rights under the guise of police regulation.

In *ex parte Montgomery*, (125 Pac., 1070; 1912), the Supreme Court of California reaffirmed the constitutionality of the districting ordinance in Los Angeles.

The court also held that the right of the Legislature in exercising the police power to regulate, or, in proper cases, to prohibit the conduct of a given business, is not limited by the fact that the value of investments made in the business prior to any legislative action will be diminished. A business which, when established, is entirely unobjectionable, may by the growth of population in the vicinity become a source of danger to the health and comfort of those who have come to be occupants of the surrounding territory. If the legislature should then prohibit its further conduct, the proprietor can have no complaint upon the mere fact that he has been carrying on the trade in that locality for a long time. The power to regulate the use of property or the conduct of a business is, of course, not arbitrary. The restrictions must bear a reasonable relation to some legitimate purpose within the purview of the police power.

Where there are reasons justifying the prohibition of a business within an area described in an ordinance, the Court in determining the validity of the prohibition will not consider whether conditions in other parts of the city require a like prohibition, as that presents a legislative question.

The petitioner was not satisfied with this decision and appealed to the U. S. Supreme Court in the case of *Hadacheck* v. *Sebastian* (36 Sup. Ct., 143; 1915), with the result that the national tribunal upheld the decision of the state court at every point.

In *Reinman* v. *City of Little Rock* (237 U. S. 171; 1917) the ordinance passed upon by the Supreme Court of the United States prohibited livery stables in the business portion of Little Rock, Arkansas. The livery stable which the city sought to eject from this district had been established there many years. The owners of the livery stable had attempted to enjoin the city from enforcing the ordinance, carrying the matter up to the supreme court of the state, and, having lost there, appealed to the national tribunal. The

plaintiff charged, among other things, that the ordinance was in contravention of those provisions of the 14th amendment respecting due process of law and the equal protection of the laws.

In the opinion of the Court there was no question that livery stables can be reasonably regulated with respect to their location and the manner in which they are to be conducted in a thickly populated city. Such subjects are well within the police power of the state so long as they are not shown to be clearly unreasonable or arbitrary, and provided they operate uniformly upon all persons similarly situated in particular districts, the districts themselves not appearing to be arbitrarily selected. Under these conditions the Court stated that it could not be judicially declared that there was a deprivation of property without due process of law, or a denial of the equal protection of the laws within the meaning of the 14th amendment. The ordinance was upheld.

In *Cusack* v. *City of Chicago* (108 N. E., 340; 1914) the Supreme Court of Illinois sustained the validity of an ordinance requiring frontage consents to the erection of billboards, in residence blocks, a residence block being defined as one in which half the buildings on both sides were used exclusively for residence purposes. The plaintiff alleged this ordinance to be invalid on the ground that it was discriminatory and unconstitutional, and that it deprived him of his property without due process of law.

The court held the ordinance a reasonable exercise of the police power as the evidence showed bill boards to be productive of fire, and that residence districts were not so well protected as business districts. Evidence showing that billboards afforded protection to disorderly and lawbreaking persons, and that residence blocks were not so well policed as business blocks was also admitted. In view of these facts the consent of a majority of the residence owners, according to frontage, was not held to be unreasonable.

The plaintiff appealed to the United States Supreme Court, claiming that the ordinance was not an exercise by the city of power to regulate or control the construction and maintenance of billboards, but was a delegation of legislative power to the owners of a majority of the frontage in the block "to subject the use to be made of their property by the minority owners of property in such block to the whims and caprices of their neighbors." The plaintiff relied chiefly on the decision of the Court in *Eubank* v. *Richmond*, (226 U. S., 137).

The Supreme Court in a decision handed down January 15, 1917 (see *Cusack* v. *City of Chicago*, 137 Sup. Ct., 192), found there was sufficient cause to justify the placing of billboards in a separate class from buildings and fences as well as to justify the prohibition of their erection in residence districts in the interest of the safety, morality, health and decency of the community.

The court distinguished the Eubank case and the one on trial as follows:

> The former left the establishment of the building line untouched until the lot owners should act, and then made the street committee the mere automatic register of that action and gave to it the effect of law. The ordinance in the case at bar absolutely prohibits the erection of any billboards in the blocks designated, but permits this prohibition to be modified with the consent of the persons who are to be most affected by such modification. The one ordinance permits two-thirds of the lot owners to impose restrictions upon the other property in the block, while the other permits one-half of the lot owners to remove a restriction from the other property owners. This is not a delegation of legislative power, but is, as we have seen, a fa-

miliar provision affecting the enforcement of laws and ordinances.

XV ZONING ORDINANCES SUSTAINED BY COURTS

How far the courts will go in upholding zoning as a proper exercise of the police power may probably be best summarized by an outline of what phases of the subject they have already upheld either in whole or in part:

1. Zoning buildings according to height.
   Attorney General v. *Williams*, 174 Mass., 476; 55 N. E. 77 (1899).
   Cochran v. *Preston*, 108 Md., 220; 70 Atl., 113 (1908).
   Welch v. *Swasey*, 193 Mass., 364; 79 N. E., 145 (1907); 214 U. S. 91 (1909).
2. Establishment of building lines.
   Eubank v. *City of Richmond*, 110 Va., 749, 67 S. T., 376 (1910); 214 U. S., 91, (1913).
3. Exclusion of factories and heavier trades from residence districts.
   Opinion of Justices, Mass. 127 N. E. R. 525 (1920).
   Lincoln Trust Co. v. *Williams Building Corp.* 169 N. Y. Supp. 1045; 183 App. Div. 225, 229 N. Y. 313 (1920).
   People ex rel. *Morris* v. *Osborn*, 718 Ohio Law Rep 22 (1920).
   Ex Parte Montgomery, 163 Cal., 457, 125 Pas., 1070 (1912).
   Ex Parte Hadacheck, 165 Cal., 416, 132 Pas. 529 (1913).
   Hadacheck v. *Sebastian*, 239 U. S., 394 (1915).
   In the Matter of Application of Richard Russell, 158 N. Y. Supp., 162 (1916).
4. Exclusion of certain trades and industries from business districts.
   Reinman v. *Little Rock*, 107 Ark., 174, 237 U. S., 171 (1915).
   Opinion of the Justices, Mass. House Doc., 1920 No. 1774.
   People ex rel. *Morris* v. *Osborn* 18 Ohio Law Rep 22 (1920).
   Lincoln Trust Co. v. *Williams Building Corp.* 169 N. Y. Sup. 1045; 229 N. Y. 313 (1920) 183 App. Div. 225.
5. Exclusion of business from residence districts.
   Lincoln Trust Co. v. *Williams Buildings Corp.* (*supra*) 169 N. Y. Sup. 1045; 183 App. Div. 225, 229 N. Y. 313 (1920).
   Opinion of the Justices, Mass. House Doc., 127 N. E. R. 525 (1920).
   People ex rel. *Morris* v. *Osborn*, 18 Ohio Law Rep 22 (1920).
   Ex Parte Quong Wo 118 Pac. 714 (1911).
   Spann v. *City of Dallas*, 189 St. W. 999 (1916).
   City of Spokane v. *Camp*, 97 Pac. 770 (1908).
   City of Chicago v. *Stratton*, 162, 111, 494, 44 N. E. 853 (1896).
   People ex rel *Busching* v. *Ericsson* 263, 111, 368, 105 N. E. 315 (1914).
   People ex rel *Keller* v. *Village of Oak Park*, 107 N. E. 636 (1915).
   Cusack v. *City of Chicago* 267, 111, 344; 108 N. E. 340 (1914); 242 U. S. 526 (1917).
   Shea v. *City of Muncie*, 148 Ind. 14, 46 N. E. 138.
   Pierce Oil Corp. v. *Hope*, 248 N. S. 498.
6. Exclusion of apartments from private house districts.
   Opinion of Justices, Mass. 127 N. E. R. 525 (1920).
   People ex rel *Morris* v. *Osborn*, 18 Ohio Law Rep 22 (1920).
7. Retro-active regulations ejecting existing trades.
   Ex Parte Quong Wo, 118 Pac. 714 (1911).
   Ex Parte Montgomery, 163 Cal. 457, 125, Pac. 1070 (1912).
   Ex Parte Hadacheck, 165 Cal. 416, 132 Pac. 589, (1913).
   Hadacheck v. *Sebastian*, 239 U. S. 394, (1915).
   Reinman v. *Little Rock*, 107 Ark., 174, 237, U. S. 171 (1915).
8. Exclusion of particular classes of buildings within prescribed areas.
   McIntosh v. *Johnson*, 211 N. Y., 265-garage within 50 feet of school.
   Nahser v. *City of Chicago*, 271 Ill., 288 moving picture within 200 feet of school.
   City of Spokane v. *Camp*, 97 Pac. 770 (1908) Stable within 200 feet of residence.

The decisions of the United States and California Supreme Court sustaining the zoning ordinance establishing residential and industrial districts in Los Angeles; of the United States and Arkansas Supreme Courts upholding the zoning regulations as to the use of buildings in Little Rock, of the United States and Massachusetts Supreme Courts supporting the zoning

regulations of Boston limiting the height of buildings; of the United States and Illinois Supreme Courts finding the Chicago ordinance zoning billboards entirely out of residence districts reasonable; of the United States and Virginia supreme courts declaring the building lines established by Richmond valid; of the highest court in Maryland approving of the height of building regulations adopted by Baltimore; of the Court of Appeals in New York finding nothing unconstitutional in the comprehensive zoning ordinance passed by New York city limiting the height and bulk of buildings, regulating the size of courts and yards, restricting the percentage of lot area that might be occupied by buildings and controlling the location of trades and industries; the opinion of the justices of the Supreme Judicial Court of Massachusetts certifying as to the legality of zoning, not only as to the restriction of all trades and industries in residence districts but as to the location of dwellings and apartments permitting apartments to be excluded from private house districts and both dwellings and apartment houses from industrial districts; of the Supreme Court in Texas ratifying the exclusion of stores in residence districts; of the Court of Common Pleas in Ohio twice sanctioning the zoning ordinance of East Cleveland which not only excludes all business and manufacturing from residence districts but actually prohibits apartments in single family dwelling districts; and innumerable decisions on various phases of zoning and building control which are growing more numerous every day, furnish increasing evidence of the fact that zoning, when properly carried out, is a valid exercise of the police power. The fact that some of these opinions have even sustained retroactive regulations emphasizes the length to which the courts will go in upholding this kind of legislation.

Care must, however, be exercised in drafting zoning regulations, for each locality so that they fit local conditions, that they are not arbitrary or discriminatory, and that they do not fall within the ban of class legislation. Above all, reasonableness must be the test of both the classification and the districts established. Whether the legality of any particular zoning scheme will be sustained, seems to depend more upon the carefulness and fairness put into the preparation of the regulations than upon any lack in the forward-looking attitude of the courts.